No. 80-2078

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

DAMES & MOORE, a partnership,
Petitioner,

v.

DONALD T. REGAN, the Secretary
of the Treasury of the United States
of America, and THE UNITED STATES OF AMERICA,
Respondents,

and

THE ISLAMIC REPUBLIC OF IRAN,
THE ATOMIC ENERGY ORGANIZATION OF
THE ISLAMIC REPUBLIC OF IRAN,
and
BANK MARKAZI IRAN,
Intervenor-Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit Before Judgment

BRIEF FOR INTERVENOR-RESPONDENT THE ISLAMIC REPUBLIC OF IRAN

THOMAS G. SHACK, JR.
Counsel of Record
RAYMOND J. KIMBALL
GREGORY DE SOUSA
CHRISTINE COOK NETTESHEIM

ABOUREZK, SHACK &
MENDENHALL, P.C.
1129 Twentieth Street, N.W.
Washington, D.C. 20036
(202) 293-5900

Counsel for Intervenor-Respondent Islamic Republic of Iran

On the Brief:
JOHN B. BEATY
JAMES A. STENGER
THOMAS D. SILVERSTEIN

QUESTIONS PRESENTED FOR REVIEW

The issues presented for review and addressed herein by intervenor-respondent the Islamic Republic of Iran are:

1. Whether the Algerian Declarations, and the obligations imposed on the United States by the Declarations, bind United States courts as a matter of international and domestic law;

2. Whether the Executive actions ordering the transfer of Iranian assets, as required by the Algerian Declarations, are a valid exercise of the President's authority under the Constitution and the International Emergency Economic Powers Act;

3. Whether the Algerian Declarations validly settled claims of United States nationals consistent with the jurisdictional grant of the Foreign Sovereign Immunities Act;

4. Whether the revocation of a revocable license to attach foreign assets constitutes an unconstitutional taking of property of United States litigants without just compensation and whether this Court should now decide whether the settlement of claims of United States litigants, effected by the Algerian Declarations, constitutes an unconstitutional taking of their property without just compensation.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
TABLE OF AUTHORITIES	iv
EXECUTIVE ORDERS AND REGULATIONS INVOLVED	2
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	12
ARGUMENT	13
I. THE ALGERIAN DECLARATIONS BIND THE UNITED STATES AS A MATTER OF INTERNATIONAL AND DOMESTIC LAW, AND THE COURT SHOULD NOT PLACE THE UNITED STATES IN BREACH OF ITS OBLIGATIONS BY DECLINING TO UPHOLD EXECUTIVE ACTIONS INTENDED TO DISCHARGE THOSE OBLIGATIONS	13
II. THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT PERMITS THE PRESIDENT TO BLOCK, REGULATE, AND COMPEL TRANSFERS OF FOREIGN ASSETS DURING A NATIONAL EMERGENCY	17
A. The President Possesses Express Statutory Authority To Regulate and Compel the Transfer of Foreign Assets	17
B. The Legislative History of the IEEPA Indicates No Intent to Limit Beyond the Plain Meaning of the Statute Executive Authority To Transfer Assets	20
C. Congress Has Acquiesced in the President's Exercise of Authority To Nullify Attachments and Compel the Transfer of Iranian Assets	22

Page

D. This Court and the Lower Courts in the Iranian Assets Litigation Have Upheld the Executive's Statutory Powers To Regulate Transfers of Foreign Assets 24

E. The Foreign Sovereign Immunities Act Does Not Supercede the President's Authority under the IEEPA To Return Iranian Property 29

III. PETITIONER'S CLAIM HAS BEEN VALIDLY SETTLED BY THE ALGERIAN DECLARATIONS, AND THE FOREIGN SOVEREIGN IMMUNITIES ACT DOES NOT IMPAIR THE VALIDITY OF THIS SETTLEMENT 33

A. The Executive Has Authority To Settle Petitioner's Claims by the Algerian Declarations 33

B. The Foreign Sovereign Immunities Act Does Not Interfere with the Executive's Authority To Settle Claims 37

IV. NO TAKING COGNIZABLE BY THIS COURT HAS OCCURRED 41

A. Nullification of Petitioner's Prejudgment Attachment Was Not a Taking Under the Fifth Amendment 41

B. The Issue Whether Any Obligation Can Be Imposed on the United States To Compensate Petitioner for the Settlement of Claims Under the Algerian Declarations Is Not Ripe for Review 44

CONCLUSION 50

TABLE OF AUTHORITIES

	Page
CASES:	
Administrator, Federal Aviation Admin. v. Robertson, 422 U.S. 255 (1975)	32
American Bell Int'l Inc. v. Islamic Republic of Iran, Civ. Act. No. 80-0321 (D.D.C. June 11, 1981), *appeal docketed,* No. 81-1656 (D.C. Cir. June 11, 1981) *petition for cert. filed* (U.S. June 15, 1981) (No. 80-2111)	27,28,40
American Int'l Group Inc. v. Islamic Republic of Iran, No. 80-1779 (D.C. Cir. May 22, 1981)	*passim*
Avramova v. United States, 354 F. Supp. 420 (S.D.N.Y. 1973)	35
B. Altman & Co. v. United States, 224 U.S. 583 (1912)	15
Baker v. Carr, 369 U.S. 186 (1962)	26
Behring Int'l v. Imperial Iranian Air Force, 475 F. Supp. 383 (D. N.J. 1979)	
Blount Brothers Corp. v. Government of Iran, No. CV 79-1442V (W.D. Wash. May 11, 1981), *appeal pending,* No. 81-3256 (9th Cir.)	27
Blount Brothers Corp. v. Government of Iran, No. 81-3256 (9th Cir. June 1, 1981), *as amended* (June 9, 1981)	27,40
Chas. T. Main Int'l Inc. v. Khuzestan Water & Power Auth., No. 80-1027 (1st Cir. May 22, 1981)	*passim*
Chas. T. Main Int'l Inc. v. United States, Civ. No. 80-315-C (D. Mass. Mar. 17, 1981), *aff'd,* No. 81-1176 (1st Cir. May 22, 1981)	27,40
Chevron Chem. Co. v. Costle, 499 F. Supp. 732 (D. Del. 1980), *aff'd,* 641 F.2d 104 (3d Cir. 1981)	49
Chicago & Southern Air Lines v. Waterman Steamship Corp., 333 U.S. 103 (1948)	28
County-Wide Insurance Co. v. Harnett, 426 F. Supp. 1030 (S.D.N.Y.), *aff'd mem.,* 431 U.S. 934 (1977)	48
Dames & Moore v. Atomic Energy Organization of Iran, No. CV 79-4918 LEW (C.D. Cal., filed Dec. 19, 1979)	3,10

	Page
Dames & Moore v. Atomic Energy Organization of Iran, No. 81-2-00290-4 (Wash. Super. Ct., filed Feb. 19, 1981)	7,9
Dames & Moore v. Atomic Energy Organization of Iran, No. 81-2-00665-3 (Wash. Super. Ct., filed Feb. 19, 1981)	7,9
Dames & Moore v. Atomic Energy Organization of Iran, No. 81-2-03449-7 (Wash. Super. Ct., filed Mar. 5, 1981)	9
Dames & Moore v. Donald T. Regan, No. CV 81-2064 LEW (C.D. Cal., filed April 27, 1981)	9-10,28
Daniel, Mann, Johnson & Mendenhall v. Donald T. Regan, No. CV 81-1101 LEW (C.D. Cal., filed May 5, 1981)	10,28
Dole v. Carter, 444 F. Supp. 1065 (D. Kan. 1977)	15,44
Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59 (1978)	49
Electronic Data Systems Corp. Iran v. Social Security Organization of the Government of Iran, No. CA-3-79-218-F (N.D. Tex. June 7, 1981)	28,40
E-Systems, Inc. v. Islamic Republic of Iran, 491 F. Supp. 1294 (N.D. Tex. 1980)	29
Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980)	33
Goldberg v. Kelly, 397 U.S. 254 (1970)	48
Guerra v. Guajardo, 466 F. Supp. 1046 (S.D. Tex. 1978)	16
Harisiades v. Shaughnessy, 342 U.S. 580 (1952)	26
Hirabayashi v. United States, 320 U.S. 81 (1943)	28
Hodel v. Indiana, No. 80-231, (U.S. June 15, 1981)	47
Hodel v. Virginia Surface Mining & Recl. Ass'n, No. 79-1538 (U.S. June 15, 1981)	46,47
K.S.B. Technical Sales Corp. v. New Jersey Dist. Water Supply Comm'n, 381 A.2d 774 (N.J. 1977), *appeal dismissed*, 435 U.S. 982 (1978)	16
Lauritzen v. Larsen, 345 U.S. 571 (1953)	15,16
Lenoir v. Porters Creek Watershed Dist., 586 F.2d 1081 (6th Cir. 1978)	49
Mackenzie v. Hare, 239 U.S. 299 (1915)	28

	Page
Marschalk Co. v. Iran Nat'l Airlines Corp., No. 79 Civ. 7035 (CBM) (S.D.N.Y. June 11, 1981)	25,27,40, 43,47
Mashayekhi v. Iran, Civ. Act. No. 79-2039 (D.D.C. June 11, 1981)	45
Mathews v. Diaz, 426 U.S. 67 (1976)	22
Morrissey v. Brewer, 408 U.S. 471 (1972)	48
Morton v. Mancari, 417 U.S. 535 (1974)	32-33
Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64 (1804)	15,33
New England Merchants Nat'l Bank v. Iran Power Generation and Transmission Co., 502 F. Supp. 120 (S.D.N.Y. 1980), *remanded on other grounds*, No. 80-6254 (2d Cir. Apr. 9, 1981)	29
Nielsen v. Secretary of Treasury, 424 F.2d 833 (D.C. Cir. 1970)	35,45
Nuclear Tests Case (Australia v. France), [1974] I.C.J. Rep. 253, 57 I.L.R. 398	14
Orvis v. Brownell, 345 U.S. 183 (1953)	21,25
Ozanic v. United States, 188 F.2d 228 (2d Cir. 1951).	35
The Paquete Habana, 175 U.S. 677 (1900)	15
Penn Central Transp. Co. v. New York City, 438 U.S. 104 (1978)	49
Propper v. Clark, 337 U.S. 472 (1949)	21,33
Reading & Bates Corp. v. National Iranian Oil Co., 478 F. Supp. 724 (S.D.N.Y. 1979)	29
Regional Rail Reorganization Act Cases, 419 U.S. Reorganization Act 102 (1974)	48,49
Richardson v. Simon, 560 F.2d 500 (2d Cir. 1977), *appeal dismissed sub nom. Richardson v. Blumenthal*, 435 U.S. 939 (1978)	21,22,24
Rossi v. Brown, 23 F.E.P. Cas. 1694 (D.C. Cir. Sept. 15, 1980)	14
S.A. Enterprises Jan de Nul v. Brown & Root Int'l, Ltd., No. H-80-131 (S.D. Tex. May 18, 1981)	28
Sardino v. Federal Reserve Bank, 361 F.2d 106 (2d Cir. 1966)	21

	Page
Security Pacific Nat'l Bank v. Government and State of Iran, No. CV 79-4661 RJK (C.D. Cal. Apr. 30, 1981), *appeal pending sub nom. Hoffman Export Corp. v. Government of Iran*, No. 81-5432 (9th Cir.)	27,29, 40,46
Sociedad Nacional de Marineros de Honduras v. McCulloch, 201 F. Supp. 82 (D.D.C. 1962), *aff'd*, 372 U.S. 10 (1963)	15
Sperry Corp. v. Government of Iran, No. 80-2766 (D.D.C. June 11, 1981)	28
Stringer v. United States, 471 F.2d 381 (5th Cir. 1973), *cert. denied*, 412 U.S. 943 (1973)	49
United States v. Belmont, 301 U.S. 324 (1937)	15-6,
United States v. Chemical Foundation, 272 U.S. 1 (1926)	28-29,
United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936)	15,26, 28,38
United States v. Pink, 315 U.S. 203 (1942)	15-6, 21, 35
United States v. The Schooner Peggy, 5 U.S. (1 Cranch) 102 (1801)	36-37
United States v. Yoshida Int'l, Inc., 526 F.2d 560 (C.C.P.A. 1975)	31,32,33
Union Carbide Agricultural Prods. Co. v. Costle, 632 F.2d 1014 (2d Cir. 1980)	45
Unidyne Corp. v. Government of Iran, Civ. Act. No. 80-1029-A (E.D. Va. Mar. 30, 1981)	27
Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)	16,28,38
Zittman v. McGrath, 341 U.S. 446 (1951)	21,25,26
CONSTITUTIONAL PROVISIONS:	
U.S. Const., art. II, §2, cl. 2	15
U.S. Const., art. VI	31
STATUTES, EXECUTIVE ORDERS & REGULATIONS:	
1 U.S.C. §112b (Supp. III 1979)	16,23

	Page
Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§1330, 1391(f), 1441(d), 1602-11 (Supp. III 1979)	*passim*
§1604	31
§1609	29,31,41
§1610(a)	41
§1610(d)	29
International Emergency Economic Powers Act, 50 U.S.C. §§1701-1706 (Supp. III 1979)	*passim*
§1701(a)(1)	17
§1702	20,30
§1702(a)(1)(B)	18,19
§1702(a)(1)(B)	
§1703	23
§1703(d)	23
National Emergencies Act, 50 U.S.C. §§1622(b), 1631, 1641 (Supp. III 1979)	23
Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§1201-1328 (Supp. III 1979)	46-47
Trading with The Enemy Act, 50 U.S. C. App. §§1-44 (1976 & Supp. III 1979)	*passim*
§5(b)	17,20,21 22,25
Exec. Order No. 12,170, 44 Fed. Reg. 65,729 (1979).	2,19
Exec. Order No. 12,276, 46 Fed. Reg. 7,913 (1981)	2,5
Exec. Order No. 12,277, 46 Fed. Reg. 7,915 (1981)	5,6,42
§1-102(a)	5
§1-102(b)	6,42
§1-102(c)	5,42
Exec. Order No. 12,278, 46 Fed. Reg. 7,917 (1981), *as corrected,* 46 Fed. Reg. 10,895 (1981)	5,6,42
§1-104(a)	5
§1-104(b)	6,42
§1-104(c)	5,42

	Page
Exec. Order No. 12,279, 46 Fed. Reg. 7,919 (1981), *as corrected,* 46 Fed. Reg. 10,897 (1981)	5,6,42
§1-102(a)	5
§1-102(b)	6,42
§1-102(c)	5,42
Exec. Order No. 12,280, 46 Fed. Reg. 7,921 (1981)	5,6,42
§1-102(a)	6
§1-102(b)	6,42
§1-102(c)	6,42
Exec. Order No. 12,281, 46 Fed. Reg. 7,923 (1981)	5,6,42
§1-102(a)	6
§1-102(b)	6,42
§1-102(c)	6,42
Exec. Order No. 12,294, 46 Fed. Reg. 14,111 (1981).	7,34
Foreign Assets Control Regulations	
31 C.F.R. §500.201 (1980)	30
31 C.F.R. §500.310 (1980)	30
Cuban Assets Control Regulations	
31 C.F.R. §515.201 (1980)	21,30
31 C.F.R. §515.310 (1980)	21,30
31 C.F.R. §515.504 (1963)	21
Iranian Assets Control Regulations	
31 C.F.R. §§535.101-535.904 (1980)	2,3
§535.201	17,25,44
§535.201(a)	41
§535.203(e)	3,7,17, 25,34,41, 44
§535.301(a)(1)	3
§535.310	3,17,18, 25,41,44
§535.418	8,17,25, 42,44

	Page
§535.504	44
§535.504(a)	3,42
§535.504(b)(1)	7,8,34
§535.504(b)(1)(2)	8
§535.504(b)(2)	3,17
§535.701	11
§535.805	3,25
44 Fed. Reg. 65,956 (1979) (to be codified in 31 C.F.R. §535.201)	2
44 Fed. Reg. 65,956 (1979) (to be codified in 31 C.F.R. §535.201(a))	2,3,9
44 Fed. Reg. 65,957 (1979) (to be codified in 31 C.F.R. §535.210(a))	2,41,44
46 Fed. Reg. 14,330-14,377 (1981)	8
46 Fed. Reg. 14,330 (1981)	8
46 Fed. Reg. 14,334 (1981) (to be codified in 31 C.F.R. §535.213(a), 535.214(a))	2,8
46 Fed. Reg. 14,334 (1981) (to be codified in 31 C.F.R. §535.215)	2,8
46 Fed. Reg. 14,334 (1981) (to be codified in 31 C.F.R. §535.218)	8,42
46 Fed. Reg. 14,335 (1981) (to be codified in 31 C.F.R. §535.221(b))	2,8,11, 39
46 Fed. Reg. 14,335 (1981) (to be codified in 31 C.F.R. §535.222)	34
46 Fed. Reg. 14,335 (1981) (to be codified in 31 C.F.R. §535.222(a))	8
46 Fed. Reg. 14,336 (1981) (to be codified in 31 C.F.R. §535.504(b)(1))	8,42
46 Fed. Reg. 14,337 (1981)	2,8
46 Fed. Reg. 30,340 (1981)	2,11
46 Fed. Reg. 30,341 (1981) (to be codified in 31 C.F.R. §§535.213(b), 535.214(b))	11
46 Fed. Reg. 30,341 (1981) (to be codified in 31 C.F.R. §535.221)	11

	Page
46 Fed. Reg. 31,630 (1981) (to be codified in 31 C.F.R. §§535.213(e), 535.214(e))	11
46 Fed. Reg. 31,630 (1981) (to be codified in 31 C.F.R. §535.215(c))	11
EXECUTIVE & INTERNATIONAL AGREEMENTS:	
Declaration of the Government of the Democratic and Popular Republic of Algeria (Jan. 19, 1981)	*passim*
General Principle A	4,14,45
General Principle B	4,13,33, 34,41
¶4	4,5,14
¶5	4,5,14
¶6	4,5,14, 34
¶7	4,5,14, 45
¶8	4,5,14
¶9	4,5,14
¶17	14,15,35
Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran (Jan. 19, 1981)	*passim*
Article II	34
Article II, ¶3	15
Article III, ¶4	34
Article IV, ¶1	34
Article IV, ¶3	15,34,35, 45
Article VI, ¶4	7,35
Article VII	34
Treaty of Amity, Economic Relations, and Consular Rights, Aug. 15, 1955, United States-Iran, 8 U.S.T. 899, T.I.A.S. 3853 (entered into force June 16, 1957)	13,29,45

	Page
LEGISLATIVE MATERIALS:	
H.R. Rep. No. 1487, 94th Cong., 2d Sess. *reprinted in* [1976] U.S. Code Cong. & Ad. News 6604	31
H.R. Rep. No. 1301, 92d Cong., 2d Sess., *reprinted in* [1972] U.S. Code Cong. & Ad. News 3067	16
H.R. Rep. No. 459, 95th Cong., 1st Sess. (1977)	20,21, 22-23,30
S. Rep. No. 466, 95th Cong., 1st Sess., *reprinted in* [1977] U.S. Code Cong. & Ad. News 4540	23,30,39
Sen. Comm. on Government Operations, National Emergencies Act, S. Rep. No. 1168, 94th Cong., 2d Sess. (1975)	21
Hearings on the Iranian Assets Settlement Before the Senate Comm. on Banking, Housing and Urban Affairs, 97th Cong., 1st Sess. (Feb. 19, 1981) (unpublished)	39
Hearings on the Iranian Agreements Before the Senate Comm. on Foreign Relations, 97th Cong., 1st Sess. (Feb. 17-18, 1981) (unpublished)	24,39
Hearings on the Algerian Declarations Before the House Comm. on Foreign Affairs, 97th Cong., 1st Sess. (Feb. 19, 1981) (unpublished)	24
Hearings on H.R. 3493 Before the Subcomm. on Claims and Governmental Relations of the House Comm. on the Judiciary, 93d Cong., 1st Sess. (1973)	31
Hearings on Emergency Controls on Int'l Economic Transactions Before the Subcomm. on Int'l Economic Policy and Trade of the House Comm. on Int'l Relations, 95th Cong., 1st Sess. (1977)	30
79 Cong. Rec. 969 (1935) (listing 40 executive agreements, entered into between 1842 and 1931, providing for arbitration of claims against foreign governments)	16
President's Message to Congress on the United States-Iran Agreement on Release of the American Hostages, 17 Weekly Comp. of Pres. Doc. 3041 (Jan. 19, 1981)	24
President's Message to Congress on the Suspension of Litigation Against Iran, 17 Weekly Comp. of Pres. Doc. 189 (Feb. 24, 1981)	24

Page

SCHOLARLY COMMENTARY:

S. Crandall, *Treaties: Their Making and Enforcement* (2d ed. 1916) 36

L. Henkin, *Foreign Affairs and the Constitution* (1972) 38

W. McClure, *International Executive Agreements* (1941) 15

Q. Wright, *The Control of American Foreign Relations* (1922) 38

Restatement (Second) of Foreign Relations Law of the United States (1965)

§3, Comment c 15

§3, Comment g 15

§115, Comment a, Illustration 2 14

§138 14

§140 14

Memorandum by American Law Div'n, Congressional Research Serv., Library of Congress, *Definition of the Phrase International Agreement* (Mar. 17, 1978) 14

MISCELLANEOUS:

Fed. R. Civ. P. 12(b)(6) 10

Fed. R. Civ. P. 62(c) 11

Brief for the United States as *Amicus Curiae, Electronic Data Systems Corp. Iran v. Social Security Organization of the Government of Iran*, 610 F.2d 94 (2d Cir. 1979) 30

No. 80-2078

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

DAMES & MOORE, a partnership,
Petitioner,

v.

DONALD T. REGAN, the Secretary
of the Treasury of the United States
of America, and THE UNITED STATES OF AMERICA,
Respondents,

and

THE ISLAMIC REPUBLIC OF IRAN,
THE ATOMIC ENERGY ORGANIZATION OF
THE ISLAMIC REPUBLIC OF IRAN,
and
BANK MARKAZI IRAN,
Intervenor-Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit Before Judgment

BRIEF FOR INTERVENOR-RESPONDENT THE ISLAMIC REPUBLIC OF IRAN

Intervenor-respondent the Islamic Republic of Iran (the "Government of Iran"), by counsel, herewith submits its brief on writ of *certiorari.*

EXECUTIVE ORDERS AND REGULATIONS INVOLVED

The following supplements the Executive Orders and regulations cited by petitioner (Pet. at 2-3): Exec. Order No. 12,170, 44 Fed. Reg. 65,729 (1979); Exec. Order No. 12,276, 46 Fed. Reg. 7,913 (1981); 31 C.F.R. §§535.101-535.904 (1980); 44 Fed. Reg. 65,956 (1979) (to be codified in 31 C.F.R. §535.201); 46 Fed. Reg. 14,334 (1981), *as amended,* 46 Fed. Reg. 26,477 (1981), 46 Fed. Reg. 30,341 (1981), 46 Fed. Reg. 31,630 (1981) (to be codified in 31 C.F.R. §535.213); 46 Fed. Reg. 14,334 (1981), *as amended,* 46 Fed. Reg. 26,477 (1981), 46 Fed. Reg. 30,341 (1981), 46 Fed. Reg. 31,630 (1981) (to be codified in 31 C.F.R. §535.214); 46 Fed. Reg. 14,334 (1981), *as amended,* 46 Fed. Reg. 26,477 (1981); 46 Fed. Reg. 31,630 (1981) (to be codified in 31 C.F.R. §535.215); 46 Fed. Reg. 14,335 (1981) (to be codified in 31 C.F.R. §535.221); 46 Fed. Reg. 30,341 (1981) (to be codified in 31 C.F.R. §535.221); 46 Fed. Reg. 30,340 (1981); 46 Fed. Reg. 14,337 (1981).

These authorities are set forth in a separate Appendix of intervenor-respondent the Islamic Republic of Iran ("Iran App.").

The complete text of the 1980 Iranian Assets Control Regulations is also set forth for the Court's convenience and ease of reference, although several of these regulations have been quoted by petitioner in its appendix.

STATEMENT OF THE CASE

On November 14, 1979, former President Carter issued Exec. Order No. 12,170, 44 Fed. Reg. 65,729 (1979) (Iran App. 1a), blocking all property and interests in property of the Government of Iran, its instrumentalities, and controlled entities within the jurisdiction of the United States or within the possession or control of persons subject to the jurisdiction of the United States. The Department of the Treasury concurrently issued regulations implementing the Executive Order. *See*

generally 31 C.F.R. §§535.101-535.904 (1980) (commonly referred to as the "Iranian Assets Control Regulations") (Iran App. 5a). The regulations, *inter alia,* prohibited attachments, garnishments, judgments, liens, executions, and all other judicial process with respect to property in which Iran[1] had an interest on or after November 14, 1979. 31 C.F.R. §535.203(e) (Iran App. 11a); *see* 44 Fed. Reg. 65,956 (to be codified in 31 C.F.R. §535.201(a)) (Iran App. 50a); 31 C.F.R. §535.310 (Iran App. 16a). The Treasury Department issued a further regulation, 31 C.F.R. §535.805 (Iran App. 48a), on November 19, 1979, specifically providing that all regulations and licenses issued pursuant to the Iranian Assets Control Regulations could be revoked at any time.

Thereafter, on November 23 and December 18, 1979, the Treasury Department amended its regulations by issuing a general license that authorized certain judicial proceedings, including prejudgment attachments, with respect to Iranian property. 31 C.F.R.§§535.418, 535.504(a) (Iran App. 23a, 29a). Judgments and executions thereon were among the judicial proceedings which remained prohibited, as was the creation of liens. 31 C.F.R. §§535.203(e), 535.504(b)(2) (Iran App. 11a, 29a).

On December 19, 1979, petitioner commenced an action in the United States District Court for the Central District of California against the Government of Iran, the Atomic Energy Organization of the Islamic Republic of Iran ("AEOI"), and 27 Iranian banks. *Dames & Moore* v. *Atomic Energy Organization of Iran,* No. CV 79-4918 LEW (C.D. Cal.). Petitioner alleged that it was the owner of a Venezuelan company, Dames & Moore, S.R.L. ("Dames"), which had entered into a contract with AEOI to perform certain site validation studies and other services in connection with the construction of a proposed nuclear power plant in Iran. The contract provided that AEOI could terminate the contract at any time for its convenience,

[1] Included within the definition of Iran were the Government of Iran, its agencies, instrumentalities, and political subdivisions. 31 C.F.R. §535.301 (a)(1) (Iran App. 15a).

and AEOI exercised this option on June 30, 1979. Petitioner, as assignee of Dames, brought suit to recover approximately $3,500,000 that allegedly was owing on alternative theories of breach of contract, account stated, agreed price, and reasonable value. On December 20, 1979; January 4, 1980; February 4, 1980; and May 12, 1980, the district court issued writs of prejudgment attachment against the assets of the Government of Iran, AEOI,[2] and the banking defendants.

On January 19, 1981, the United States became a signatory and adhered to the Declaration of the Government of the Democratic and Popular Republic of Algeria ("General Declaration") and the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran ("Claims Declaration") (collectively referred to as the "Algerian Declarations"). (Pet. App. 21). General Principle B of the General Declaration obligates the United States:

> to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises, to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims . . . .

(Pet. App. 22).

In addition to, and independently of, this commitment, the General Declaration requires the return of Iranian assets within the jurisdiction of the United States or within the control of persons subject to the jurisdiction of the United States. General Declaration, General Principle A; ¶¶4-9 (Pet. App. 21, 23-26). Specifically, the United States agreed to bring about the immediate transfer of all gold bullion and other assets of Iran held in the Federal Reserve Bank, General Declaration, ¶4; the immediate transfer of all Iranian deposits and securities held in foreign branches of United States banks, *id.* ¶5; and the

---

[2] AEOI had no financial assets in the state of California.

immediate transfer of all financial assets and other property of Iran wherever located, *id.* ¶¶8-9. Further, all deposits and securities in domestic branches of United States banks are to be transferred within six months by July 19, 1981. *Id.* ¶6.[3]

In order to implement the United States' interpretation of the Algerian Declarations, on January 19, 1981, former President Carter issued ten Executive Orders.[4] These Executive Orders, *inter alia,* revoked all licenses and authorizations for—and prohibited persons subject to the jurisdiction of the United States from—acquiring or exercising any right, power, or privilege by court order, including prejudgment attachment, or otherwise with respect to Iranian assets. Exec. Order No. 12,277, §1-102(a), (c), 46 Fed. Reg. 7,915 (1981) (Pet. App. 37); No. 12,278, §1-104(a), (c), 46 Fed. Reg. 7,917-18 (1981) (Pet. App. 40-41); No. 12,279, §1-102(a), (c), 46 Fed. Reg.

---

[3] The commitments to transfer assets in ¶¶4-9 of the General Declaration were conditioned upon certain events, all of which have occurred: certification by Algeria that the 52 American nationals safely departed from Iran (¶9); adherence to the Declarations by the two contracting states (¶¶6, 8, 9); the establishment of a security account with a Central Bank (the Bank of England has been designated) to fund the claims program (¶¶6,7); and completion of escrow arrangements with the Central Bank (¶¶4,5). The security account established by ¶7 is to be funded from the returned assets in the initial amount of $1 billion and subsequently replenished by Iran to maintain a minimum balance of not less than $500 million. (Pet. App. 23-26).

[4] Exec. Order No. 12,276, 46 Fed. Reg. 7,913 (1981) (Iran App. 2a), authorizes certain escrow and depository agreements with the Bank of England; Exec. Order No. 12,277, 46 Fed. Reg. 7,915 (1981) (Pet. App. 36), directs the Federal Reserve Bank of New York to transfer Iranian funds to the escrow account at the Bank of England; Exec. Order No. 12,278, 46 Fed. Reg. 7,917 (1981), *as corrected,* 46 Fed. Reg. 10,895 (1981) (Pet. App. 39), directs overseas branches of the United States banks to transfer Iranian funds to the escrow account at the Bank of England; Exec. Order No. 12,279, 46 Fed. Reg. 7,919 (1981), *as corrected,* 46 Fed. Reg. 10,897 (1981) (Pet. App. 43), directs any branch or office of any bank subject to the jurisdiction of the United States, located within the United States, and holding Iranian funds to transfer these funds to the Federal Reserve Bank of New York for transfer to the escrow account at the Bank of England; Exec. Order No. 12,280, 46 Fed. Reg. 7,921 (1981) (Pet. App. 46), directs persons holding Iranian funds to transfer those funds to the Federal Reserve Bank of New York for transfer to the escrow account at the Bank of England; and Exec. Order No. 12,281, 46 Fed. Reg. 7,923 (1981) (Pet. App. 49), directs persons holding Iranian property, other than funds and securities, to transfer such property as directed by Iran. The remaining four Executive Orders are not pertinent to this case.

7,919 (1981) (Pet. App. 43); No. 12,280, §1-102(a), (c), 46 Fed. Reg. 7,921 (1981) (Pet. App. 47); No. 12,281, §1-102(a), (c), 46 Fed. Reg. 7,923 (1981) (Pet. App. 50). Additionally, each of the listed Executive Orders nullified outstanding attachments, injunctions, and other similar restraints process obtained against Iranian assets since November 14, 1979:

> All rights, powers and privileges relating to the properties described in Section 1-101 [and Section 1-102 of Exec. Order No. 12,278] of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. E.S.T., including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power or privilege are hereafter barred from exercising the same.

Exec. Order No. 12,277, §1-102(b) (Pet. App. 37); No. 12,278, §1-104(b) (Pet. App. 41); No. 12,279, §1-102(b) (Pet. App. 44); No. 12,280, §1-102(b) (Pet. App. 47); No. 12,281, §1-102(b) (Pet. App. 50).

On January 27, 1981, petitioner moved for summary judgment against the Government of Iran and AEOI and for an order prohibiting either the Government of Iran or AEOI from submitting any evidence in opposition to the summary judgment motion.[5] The United States filed a Statement of Interest

---

[5] The motion to prohibit the introduction of evidence by the Government of Iran and AEOI was based on the alleged failure of AEOI to produce certain of its personnel located in Iran for deposition in connection with a motion of the banking defendants to dismiss the complaint. Although the AEOI personnel were not deposed, the district court held a hearing on January 19, 1981, and on January 20 denied the banking defendants' motion to dismiss. On January 30, 1981, the Government of Iran and AEOI moved the district court to reconsider and vacate the discovery order, based in part on the resolution of the motion to dismiss. This motion has not been heard.

on January 29, 1981, requesting a stay of all proceedings until February 26, 1981, due to the United States' adherence to the Algerian Declarations and the need to enable President Reagan[6] to review the actions that the Executive deemed necessary for the implementation of the Declarations.[7] On February 2, 1981, the Government of Iran and AEOI moved the district court, based on the Algerian Declarations, for a continuance of the hearing on petitioner's summary judgment motion.

Notwithstanding the United States' adherence to the Algerian Declarations, its request for a stay of proceedings, the prohibition against judgments in licensed actions[8], and the motion of the Government of Iran and AEOI for a continuance, the district court on February 17, 1981, held a hearing and on February 18 entered summary judgment against the Government of Iran and AEOI in the amount of $3,788,930.79, plus interest. (Pet. App. 13). Petitioner immediately took action to execute on its judgment, and on February 19, 1981, filed its judgment both in the Superior Court of the State of Washington for Snohomish County, *Dames & Moore v. Atomic Energy Organization of Iran,* No. 81-2-00665-3 (Wash. Super. Ct.), and for Clark County, *Dames & Moore v. Atomic Energy Organization of Iran,* No. 81-2-00290-4 (Wash. Super. Ct.).

On February 24, 1981, President Reagan issued Exec. Order No. 12,294, 46 Fed. Reg. 14,111 (1981) (Pet. App. 52), suspending all claims which could be presented to the Iran-United States Claims Tribunal ("Arbitral Tribunal") under Article II of the Claims Declaration[9] and explicitly ratifying the ten Executive Orders issued on January 19, 1981. Also on February 24, the Treasury Department issued regulations

---

[6] President Reagan's involvement with the Algerian Declarations did not begin until January 20, 1981, the date on which he assumed the office of the President.

[7] The Statement of Interest also indicated that the United States would file implementing regulations by February 26, 1981.

[8] 31 C.F.R. §§535.203(e) (Iran App. 11a), 535.504(b)(1) (Pet. App. 82).

[9] The jurisdiction of the Arbitral Tribunal over any given claim is to be determined solely by the Arbitral Tribunal. Claims Declaration, Art. VI, ¶4 (Pet. App. 33).

implementing the United States' interpretation of the Algerian Declarations and the Executive Orders of January 19 and February 24, 1981.[10] *See generally* 46 Fed. Reg. 14, 330-14,337 (1981).

These regulations revoked all licenses and authorizations for acquiring attachments or injunctions against Iranian assets; nullified outstanding attachments and injunctions against Iranian assets obtained on or after November 14, 1979; and prohibited persons subject to the jurisdiction of the United States from seeking to attach or otherwise restrain Iranian assets. 46 Fed. Reg. 14,334 (1981) (to be codified in 31 C.F.R. §535.218) (Pet. App. 74), 46 Fed. Reg. 14,336 (1981) (to be codified in 31 C.F.R. §535.504(b)(1)) (Pet. App. 82).[11] Claims which could be presented to the Arbitral Tribunal were suspended. 46 Fed. Reg. 14,335 (1981) (to be codified in 31 C.F.R. §535.222(a)) (Pet. App. 78),[12] and persons within the United States (including banks) were directed to transfer to the Federal Reserve Bank of New York funds, securities, and deposits held by such persons on January 19, 1981. 46 Fed. Reg. 14,334 (1981) (to be codified in 31 C.F.R. §§535.213(a), 535.214(a)) (Iran App. 51a, 53a). With respect to other Iranian assets, the regulations required persons subject to the jurisdiction of the United States to transfer these assets as directed by the Government of Iran or its authorized agent. 46 Fed. Reg. 14,334 (1981) (to be codified in 31 C.F.R. §535.215) (Iran App. 54a).[13]

---

[10] The regulations were made effective January 19, 1981. 46 Fed. Reg. 14,330 (1981).

[11] The express authorization for prejudgment attachments previously found in 31 C.F.R. §535.418 was revoked. 46 Fed. Reg. 14,337 (1981) (Iran App. 61a).

[12] The regulation prohibiting the entry of judgments, 31 C.F.R. §535.504(b)(1), was revoked and substituted with the regulation suspending claims. The regulation prohibiting judgments, 31 C.F.R. §535.203(e), was not amended or in any way affected.

[13] The regulations provided that the United States would not seek to impose sanctions on persons who failed to make the required transfers until the Secretary of the Treasury determined that the authority to order the transfers had been the subject of a definitive legal ruling. 46 Fed. Reg. 14,335 (1981) (to be codified in 31 C.F.R. §535.221(b)) (Pet. App. 76).

The United States then filed on or about February 26 and 27, 1981, a Statement of Interest in virtually every suit pending in the United States against Iran and its agencies and instrumentalities. The Statement of Interest requested the *vacatur* of all attachments and other restraints against Iranian assets, as well as a stay of litigation of those claims arguably within the jurisdiction of the Arbitral Tribunal.

Notwithstanding the February 24 Executive Order, the Treasury regulations, and the Statement of Interest, petitioner on March 4, 1981, obtained a writ of execution against assets of the Government of Iran in Snohomish County and on March 5 in Clark County. On March 5, 1981, petitioner also filed its judgment in the Superior Court of the State of Washington for King County. No. 81-2-03449-7 (Wash. Super. Ct.) The United States, on March 10, 11, and 12, 1981, filed Statements of Interest in the Superior Courts for Snohomish, King, and Clark Counties, respectively, requesting the *vacatur* of attachments and other restraints against Iranian assets and stays of the litigation of claims arguably within the jurisdiction of the Arbitral Tribunal.[14]

The genesis of this appeal was petitioner's attempt to enjoin the United States from enforcing the amended Treasury regulations. On April 27, 1981, suit was filed in the United States District Court for the Central District of California. *Dames & Moore v. Donald T. Regan,* No. CV 81-2064 LEW (C.D. Cal.) In its complaint petitioner sought:

> 1) an injunction preventing the United States and its agencies from taking any action to nullify or in any other way interfere with petitioner's February 19, 1981 summary judgment or petitioner's efforts to execute on its judgment;[15] and
>
> 2) a declaratory judgment declaring unconstitutional the Algerian Declarations, the February 24, 1981

---

[14] These Statements of Interest were identical to the Statements the United States previously filed in other courts.

[15] Petitioner also filed a separate motion seeking a preliminary injunction.

> Executive Order, and all acts pursuant thereto seeking to nullify or interfere with the prejudgment attachments, summary judgment, the efforts of petitioner to execute on its summary judgment, and/or any statutes authorizing such acts.

(Pet. App. 1).

On May 13, 1981, the United States filed its opposition to petitioner's motion for a preliminary injunction and moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6).[16] After hearing these motions and a motion of the United States to stay the judgment entered in *Dames & Moore v. Atomic Energy Organization of Iran,* No. CV 79-4918 LEW, the district court filed an order on May 28, 1981,[17] denying petitioner's motion for a preliminary injunction, granting the United States' motion to dismiss, and granting the motion of the United States to stay the judgment in No. CV 79-4918 LEW. Since the lower court found resolution of the issues raised by the preliminary injunction and companion motions to be dispositive of the validity of the attachments in No. CV 79-4918 LEW, the court consolidated this issue in its order and vacated the attachments. (Pet. App. 106). The court stayed *vacatur* of the attachments until July 19, 1981, and certified for interlocutory appeal the issue of the authority of the Executive to suspend claims and nullify attachments.

On June 3, 1981, petitioner appealed to the United States Court of Appeals for the Ninth Circuit. (Pet. App. 163). After

---

[16] In a separate action, Daniel, Mann, Johnson & Mendenhall brought suit against respondent seeking virtually the same relief as in the instant suit. Daniel, Mann, Johnson & Mendenhall v. Donald T. Regan, No. CV 81-1101 LEW (C.D. Cal., filed May 5, 1981). Both actions were consolidated by order of the district court on April 29, 1981.

[17] The order was entered on June 2, 1981.

the Treasury Department issued regulations on June 4,[18] requiring transfer of the assets attached by petitioner to the Federal Reserve Bank by June 19, 1981, petitioner moved the district court pursuant to Fed. R. Civ. P. 62(c) to enjoin respondents pending appeal from transferring, or requiring other persons to transfer, any Iranian assets subject to an attachment in favor of petitioner. The court granted the motion on June 8, also limiting the stay of the execution proceedings in the summary judgment pending appeal. (Pet. App. 167).

On June 10, 1981, petitioner filed a petition for writ of *certiorari* to the court of appeals before judgment seeking review of the order of the district court denying petitioner's motion for a preliminary injunction and granting respondents' motion to dismiss. This Court granted *certiorari* on June 11, 1981,[19] and allowed the Government of Iran and AEOI to intervene as respondents.

---

[18] Based on the decisions in Chas. T. Main Int'l Inc. v. Khuzestan Water & Power Auth., No. 80-1027 (1st Cir. May 22, 1981), and American Int'l Group Inc. v. Islamic Republic of Iran, No. 80-1779 (D.C. Cir. May 22, 1981) (opinion issued June 5, 1981), regulations were issued on June 4, 1981, requiring persons within the United States in the possession of Iranian funds, securities, or deposits to transfer these assets to the Federal Reserve Bank of New York by June 19, 1981. 46 Fed. Reg. 30,341 (1981) (to be codified in 31 C.F.R. §§535.213(b), 535.214(b)) (Iran App. 51a, 53a). Persons failing to comply with the transfer requirements would be subject to civil and criminal penalties. 31 C.F.R. §535.701 (1980) (Iran App. 44a). *Compare* 46 Fed. Reg. 14,335 (1981) (to be codified as 31 C.F.R. §535.221(b)) (Iran App. 55a) *with* 46 Fed. Reg. 30,341 (1981) (to be codified in 31 C.F.R. §535.221) (Iran App. 57a). *See generally* 46 Fed. Reg. 30,340 (1981) (Iran App. 59a).

[19] Due to this Court's grant of *certiorari*, the Department of the Treasury amended its regulations on June 12, 1981, to extend the June 19, 1981 date for the transfer of funds, securities, and deposits to the Federal Reserve Bank of New York to a date yet to be determined by the Treasury Department. 46 Fed. Reg. 31,630 (1981) (to be codified in 31 C.F.R. §§535.213(e), 535.214(e)) (Iran App. 52a, 53a). With respect to other assets, the United States will not seek to impose sanctions on any party who fails to transfer such assets before a date to be determined by the Treasury Department if these assets were subject to an attachment, injunction, or other similar restraint on June 19, 1981. 46 Fed. Reg. 31,630 (1981) (to be codified in 31 C.F.R. §535.215(c)) (Iran App. 54a).

SUMMARY OF ARGUMENT

As a matter of international law, the Algerian Declarations obligate the United States to terminate all litigation in United States courts based on claims of United States nationals against the Government of Iran and to remove judicial impediments to the promised transfer of Iranian assets by July 19, 1981. In the context of this particular case, the Algerian Declarations require the *vacatur* of petitioner's attachments, the dissolution of the summary judgment in the underlying action, and the discontinuance of all further proceedings based on petitioner's claim.

As a matter of domestic law, the Algerian Declarations are the "law of the Land." Because the Algerian Declarations were entered into by the President pursuant to his broad powers with respect to the conduct of foreign relations and pursuant to congressional authorization to accomplish such objectives, they are a valid and self-executing international agreement and provide the governing legal authority for this litigation.

The President is given wide authority in the International Emergency Economic Powers Act to control and direct the transfer of assets of foreign states in order to resolve crises in United States foreign relations. The President exercised that authority to avoid placing the United States in breach of its international obligations under the Algerian Declarations. Because petitioner's attachments were obtained subsequent to the presidential exercise of control over Iran's assets, the attachments must be vacated.

Settlement of claims of United States nationals against foreign states has long been a power accorded the federal government in the conduct of foreign affairs, necessary to the normalization of strained relations. The President, as the sole representative of the United States in foreign affairs, historically has negotiated and engaged in executive agreements settling such claims. Congress has not disapproved this practice in the Foreign Sovereign Immunities Act. That statute withdrew from the Executive only the power to make binding determinations of the sovereign immunity to be accorded foreign states in United States courts, but did not affect the separate power to settle claims of United States nationals.

The *vacatur* of petitioner's attachments does not constitute a taking of property belonging to petitioner. Petitioner's attachments were obtained subsequent to the President's exercise of control over Iranian assets, and petitioner thereafter could obtain no property right in the assets superior to that of the United States. Revocation of a license to attach, expressly made revocable, cannot give rise to a taking of petitioner's property.

Finally, the Court need not reach the question of whether the settlement of petitioner's claim constitutes a taking, because the Algerian Declarations provide for full payment of claims determined to be valid by the Iran-United States Claims Tribunal. Whether any taking has occurred cannot be assessed until such time as petitioner's claim has been adjudicated through the arbitral process. In addition, the preservation of sovereign immunity found in the Treaty of Amity and the Foreign Sovereign Immunities Act prohibits the entry of a valid judgment against the Government of Iran in a United States court. Therefore, whether petitioner's claim could have been satisfied by resort to United States courts is speculation, in which the Court traditionally has declined to engage.

The Court should affirm the dismissal of the complaint, denial of injunctive relief, and *vacatur* of the attachments and should direct the lower court to set aside the summary judgment and to discontinue all further proceedings based on that judgment or on petitioner's claim.

ARGUMENT

I. THE ALGERIAN DECLARATIONS BIND THE UNITED STATES AS A MATTER OF INTERNATIONAL AND DOMESTIC LAW, AND THE COURT SHOULD NOT PLACE THE UNITED STATES IN BREACH OF ITS OBLIGATIONS BY DECLINING TO UPHOLD EXECUTIVE ACTIONS INTENDED TO DISCHARGE THOSE OBLIGATIONS.

General Principle B of the General Declaration requires the termination of all litigation in United States courts involving the claims of United States nationals against the Government of

Iran, the nullification of all attachments and judgments obtained therein, and an end to attempts to execute on such judgments. (Pet. App. 21-22). Central to this appeal is the United States' separate and independent obligation to assure the free mobility of Iran's assets by no later than July 19, 1981. General Principle A; ¶¶4-9 (Pet. App. 21, 23-26). These obligations are binding on United States courts under international and domestic United States law.

The Declarations, without formal ratification by the United States Senate, are in fact "international agreements." *See Nuclear Tests Case* (Australia v. France), [1974] I.C.J. Rep. 253, 267-69, 57 I.L.R. 398, 412-14 (official assurances by the French Executive constitute an "international agreement"); *Rossi* v. *Brown,* 23 F.E.P. Cas. 1694, 1696 (D.C. Cir. Sept. 15, 1980); Memorandum by American Law Div'n, Congressional Research Serv., Library of Congress, *Definition of the Phrase International Agreement* (Mar. 17, 1978) ("international agreement" includes not only "executive agreements," but also executive assurances to another state); *Restatement (Second) of Foreign Relations Law of the United States* §115, Comment a, Illustration 2 (1965). "An international agreement is binding in accordance with its terms and each party has a duty to give them effect . . . . " Id. §138. Indeed, such an agreement is binding even if inconsistent with the domestic law of either Contracting State:

> The duty of a State to give effect to the terms of an international agreement to which it is a party, as stated in §138, is not affected by a provision of its domestic law that is in conflict with the agreement or by the absence of domestic law necessary for it to give effect to the terms of the agreement.

Restatement §140. As a matter of international law, the Algerian Declarations are binding upon the United States.

A failure of the United States timely to remove the judicial impediments to the return of Iran's assets, to nullify the

summary judgment obtained herein, or to discontinue this litigation could be a breach of the Declarations. Paragraph 17 of the General Declaration confers jurisdiction in the Arbitral Tribunal to hear any dispute concerning a party's performance of its obligations under the General Declaration and to award damages thereon. (Pet. App. 28). *See also* Claims Declaration, Art. II, ¶3; Art. IV, ¶3 (Pet. App. 31, 32).

Apart from being redressable before the Tribunal, a breach of the Declarations would violate international law. *Restatement (Second) of Foreign Relations Law of the United States* §3, Comment g; *see id.* Comment c. Courts generally will strain to decide cases in accord with the United States' international obligations. *E.g., Murray* v. *Schooner Charming Betsy,* 6 U.S. (2 Cranch) 64, 118 (1804) (Marshall, C.J.) (quoted in *Lauritzen* v. *Larsen,* 345 U.S. 571, 578 (1953)); *see Sociedad Nacional de Marineros de Honduras* v. *McCulloch,* 201 F. Supp. 82, 89 (D.D.C. 1962), *aff'd,* 372 U.S. 10 (1963). Indeed, this Court has long recognized that "[i]nternational law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination." *The Paquete Habana,* 175 U.S. 677, 700 (1900).

The Algerian Declarations are also binding on United States courts under domestic law. That the President had the power to make international agreements which are the law of the land under U.S. Const., art. II, §2, cl. 2, based upon his inherent power to speak for the United States to the world community, can scarcely be challenged. *United States v. Curtiss-Wright Export Corp.,* 229 U.S. 304, 318-22 (1936); *B. Altman & Co. v. United States,* 224 U.S. 583, 600-01 (1912); *Dole v. Carter,* 444 F. Supp. 1065, 1069-70 (D. Kan. 1977); W. McClure, *International Executive Agreements* 32 (1941). And, even though the Senate does not ratify such executive agreements, the Supreme Court has accorded them effect as domestic law. *United States v. Pink,* 315 U.S. 203 (1942); *United States v. Belmont,* 301 U.S. 324 (1937).

Both *Belmont* and *Pink* involved the Litvinov Agreement entered into by the President, and the Court applied that executive agreement as the "law of the Land." 301 U.S. at 331-

32; 315 U.S. at 230; *see Guerra v. Guajardo,* 446 F. Supp. 1046, 1055-56 (S.D. Tex. 1978) (mutual assistance agreement entered into by Customs Service with Mexico is binding as domestic law); *K.S.B. Technical Sales Corp. v. New Jersey Dist. Water Supply Comm'n,* 381 A.2d 774, 777-78 (N.J. 1977), *appeal dismissed,* 435 U.S. 982 (1978) (executive agreement concerning tariffs and trade is the "law of the Land" under the Supremacy Clause).[20]

---

[20] In practice, it is the President through executive agreements (and not Congress through formal treaties) who negotiates and settles claims with foreign governments, usually accepting either lump-sum settlements or an agreement to arbitrate the claim in a neutral tribunal. *See* 79 Cong. Rec. 969-71 (1935) (listing 40 executive agreements, entered into between 1842 and 1931, providing for arbitration of claims against foreign governments). Congress itself recognized this when it enacted Pub. L. No. 92-403 (the "Case Amendment"), *codified at* 1 U.S.C. §112b (Supp. III 1979), which requires the Secretary of State to transmit the texts of international agreements (other than treaties requiring Senate consent) to Congress purely for informational purposes. H.R. Rep. No. 1301, 92d Cong., 2d Sess., *reprinted in* [1972] U.S. Code Cong. & Ad. News 3067. The Committee's Report noted:

> The right of the President to *conclude* executive agreements is not in question here, or in any way affected by S.596. Thus, the bill in no way transgresses the independent authority of the Executive in the area of foreign affairs.
>
> As the State Department itself has recognized, however, executive agreements have the same effect as treaties in international law. To the nations with which they are concluded, there is no difference between the two. That is, executive agreements no less than treaties bind the United States of America as a whole nation—not just the President or administration which makes them—under international law.

Id. at 3070 (emphasis in original). Just as this Court has treated a congressional refusal to grant the President certain authority as an implicit denial of that authority, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 586 (1952) (Black, J.), so also, the Court should treat the refusal by Congress, evident in the Case Amendment, to restrict the President's authority to enter into executive agreements as an implied authorization to engage in such agreements. Congress has not acted to withdraw this implicit authorization with respect to this agreement as it could do by passing an inconsistent statute. Therefore, the Algerian Declarations should be held unconstitutional only if "the Federal Government as an undivided whole lacks power" to enter into the agreement. 343 U.S. at 636 (Jackson, J. concurring) (describing his first category of presidential powers.)

Because both international and domestic law command that the Algerian Declarations are binding, this Court should uphold the Executive's actions intended to discharge its obligations under the Declarations.

II. THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT PERMITS THE PRESIDENT TO BLOCK, REGULATE, AND COMPEL TRANSFERS OF FOREIGN ASSETS DURING A NATIONAL EMERGENCY.

A. The President Possesses Express Statutory Authority To Regulate and Compel the Transfer of Foreign Assets.

Dames & Moore possessed a revocable, conditional license to obtain attachments, but was prohibited even during the term of the license from creating a lien, levying upon assets, taking assets into the marshal's possession, or executing upon judgment pursuant to any attachment. 31 C.F.R. §§535.201 (Iran App. 9a); 535.203(e) (Iran App. 11a); 535.310 (Iran App. 16a); 535.418 (Iran App. 23a); 535.504 (b)(2) (Iran App. 29a). Dames & Moore obtained this license pursuant to a valid Executive Order blocking all transfers in certain foreign property. This licence was revoked on January 19, 1981, according to its terms, and any rights or privileges which were enjoyed by Dames & Moore as a result of the attachments were nullified. Exec. Order No. 12,279, 46 Fed. Reg. 7,919-20 (1981) (Pet. App. 40-41). Dames & Moore never possessed any right in blocked assets which would prevent their transfer pursuant to Executive Order or Treasury regulations.

In prohibiting unauthorized transfers of foreign property and subsequently revoking conditional licenses for obtaining prejudgment attachments or other judicial orders, the President was acting pursuant to statutory authority conferred by Congress to control and compel the transfer of foreign assets. International Emergency Economic Powers Act, 50 U.S.C. §1702(a)(1) (Supp. III 1979) (the "IEEPA"). Although in enacting the IEEPA, Congress revised §5(b) of the Trading with the Enemy Act, 50 U.S.C. App. §§1-44 (1976 & Supp. III

1979) (the "TWEA"), to limit to some extent presidential powers over economic transactions during national emergencies, Congress placed no limits on the President's authority to block, regulate, or compel the transfer of foreign assets during such emergencies. *See generally* 50 U.S.C. §§1701-1706. The President was empowered to regulate judicial proceedings with respect to foreign property and to prohibit the creation of rights through judicial proceedings or otherwise which would be superior to the President's authority to respond to and resolve national emergencies. Neither the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§1330, 1391(f), 1441(d), 1602-1611 (Supp. III 1979) (the "FSIA"), nor any other legislation places any further implied limits on such Presidential authority.

The actions taken by the President and the Treasury Department to block the transfer of foreign assets, to regulate judicial proceedings with respect to those assets, and to compel the transfer of assets, were expressly authorized by the International Emergency Economic Powers Act. The IEEPA provides that during declared national emergencies, the President may:

> investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving any property in which any foreign country or a national thereof has any interest; by any person, or with respect to any property, subject to the jurisdiction of the United States.

50 U.S.C. §1702(a)(1)(B).

The regulations implementing the blocking program imposed on November 14, 1979, closely followed the statutory language of the IEEPA. The President ordered blocked "all property and interests in property of the Government of Iran."

Exec. Order No. 12,170, 44 Fed. Reg. 65,729 (1979) (Iran App. 50a). The Treasury Department regulations provided:

> No property subject to the jurisdiction of the United States or which is in the possession of or control of persons subject to the jurisdiction of the United States in which on or after the effective date Iran has any interest of any nature whatsoever may be transferred, paid, exported, withdrawn or otherwise dealt in except as authorized.

44 Fed. Reg. 65,956 (1979) (to be codified in 31 C.F.R. §535.201(a)) (Iran App. 9a).

The Department of the Treasury subsequently authorized prejudgment attachments in judicial proceedings. 31 C.F.R. §§535.504(a), 535.418 (Iran App. 29a, 23a). However, transfers pursuant to any attachment were prohibited, and the licenses were subject to amendment, modification, or revocation at any time. *Id.* §535.805 (Iran App. 48a). Dames & Moore thereafter obtained prejudgment attachments on Iranian property pursuant to this general license on December 20, 1979, and January 4, February 4, and May 12, 1980. As a result, Dames & Moore's attachments were subject to further regulation by the Treasury Department under the asset-freeze program. This followed upon the United States' adherence to the Algerian Declarations when the Executive revoked the license authorizing attachments and directed the transfer of blocked assets.

The IEEPA gives the President the express power to "prevent and prohibit" "transfers" of foreign assets, to "direct and compel" the "transfer" and "withdrawal" of the assets, and to "nullify" any "rights" and "privileges" obtained. 50 U.S.C. §1702(a)(1)(B). The IEEPA does not limit the situs or entities to which the President may compel the transfer or direct the withdrawal of assets. Thus, the President's actions are precisely within the language of the IEEPA.

Nevertheless, petitioner and others in the Iranian litigation seek to limit the plain meaning of the statutory powers conferred. They have argued that Congress intended to limit the

powers of the Executive to regulate international transactions during national emergencies; that Congress never intended to permit the President to nullify inchoate "rights" created in foreign assets in this country; that the President could not revoke the license permitting attachments, since the President had, in issuing the licenses, created judicially conferred rights superior to the President's powers to regulate further frozen assets in connection with a national emergency. Finally, it is argued that the Foreign Sovereign Immunities Act of 1976 prohibited any exercise of emergency economic powers over foreign assets which became the subject of court orders.

None of these arguments has merit, as demonstrated in the following analysis.

B. The Legislative History of the IEEPA Indicates No Intent To Limit Beyond the Plain Meaning of the Statute Executive Authority To Transfer Assets.

Section 1702 of the IEEPA is virtually identical to Section 5(b) of the Trading with the Enemy Act, 50 U.S.C. App. §5(b). The IEEPA retained the broad powers of the President to regulate international economic transactions during national emergencies short of war.[21] Congress did not restrict, nor is there any evidence in the legislative history of an intent to restrict, the Executive's authority to regulate the creation or transfer of rights and interests in blocked property by court order.

---

[21] Congress did not include in the IEEPA the following powers which were available to the President under the TWEA: "(1) the power to vest, *i.e.*, to take title to foreign property; (2) the power to regulate purely domestic transactions; (3) the power to regulate gold or bullion; and (4) the power to seize records." H.R. Rep. No. 459, 95th Cong., 1st Sess. 15 (1977) ("IEEPA House Report"). The United States has not "take[n] title to foreign property" and, therefore, no vesting is involved here. The case at bar also does not involve "purely domestic transactions." The IEEPA House Report states: "Examples of purely domestic transactions which in the past have been regulated under §5(b) include hoarding of gold by U.S. citizens and the extension of consumer credit by U.S. businesses." IEEPA House Report at 15 n.23.

Congress was aware of prior presidential blocking programs which prohibited and regulated court proceedings at the time IEEPA was enacted,[22] yet it chose not to restrict the Executive's regulation of court proceedings over foreign assets during national emergencies. Frozen assets historically have been the subject of domestic court actions by American nationals attempting to assert an interest in those assets. The Iranian litigation is only the most recent litigation against frozen foreign assets.[23] Under such circumstances foreign policy interests may conflict with the private interest of commercial litigants. While aware of this historic conflict between the national government and private litigants over the disposition of frozen foreign assets,[24] Congress nevertheless retained broad authority for the President to regulate such assets, including the authority to prohibit domestic court disposition or transfer of the assets absent license, as was required under the Cuban regulations at the time the IEEPA was passed. *See* note 24 *supra;* 31 C.F.R. §§515.201, 515.310, 515.504 (1980). Since Congress did not further limit the President's national emergency powers after reviewing previous and existing asset control programs, the conclusion is inescapable that Congress intended to confer on the President the power to regulate court proceedings affecting disposition of such assets during declared national emergencies.

---

[22] IEEPA House Report at 5-6. *See, e.g.*, the Cuban Assets Control Regulations, 31 C.F.R. §515.504 (1963) (which were still in effect at the time IEEPA was enacted). *See also* Richardson v. Simon, 560 F.2d 500 (2d Cir. 1977), *appeal dismissed sub nom.* Richardson v. Blumenthal, 435 U.S. 939 (1978). *See also* Sen. Comm. on Government Operations, National Emergencies Act, S. Rep. No. 1168, 94th Cong., 2d Sess. 33-34 (1975), wherein the General Counsel of the Department of the Treasury indicated that §5(b) of the TWEA should be retained to deal with future international financial and investment problems. This concern led to the retention of basic regulatory powers when the IEEPA was passed. IEEPA House Report at 10.

[23] *E.g.*, Orvis v. Brownell, 345 U.S. 183 (1953) (Japanese assets); Zittman v. McGrath, 341 U.S. 471 (1951) (German assets); Propper v. Clark, 337 U.S. 472 (1949) (German assets); United States v. Pink, 315 U.S. 203 (1942) (Russian assets); United States v. Belmont, 301 U.S. 324 (1937) (Russian assets); Richardson v. Simon, 560 F.2d 500 (Cuban assets); Sardino v. Federal Reserve Bank, 361 F.2d 106 (2d Cir. 1966) (Cuban assets).

[24] Congress specifically conducted a review of previous and existing uses of §5(b) of the TWEA in preparing the IEEPA legislation. IEEPA House Report at 3-6.

Because Congress did not further restrict the President's IEEPA powers, it is not for the courts to do so. In connection with the administration of the Cuban freeze program, the Second Circuit refused to disturb Treasury regulation of Cuban assets beneficially owned by American citizens. The court concluded that under section 5(b) of the TWEA:

> Congress, both in 1917 and when it later amended the Act, intended to give the President broad discretion in administering the Act, and we hold that the Regulations, as applied in this case, are authorized by the Act.

Richardson v. Simon, 560 F.2d 500, 503 (2d Cir. 1977), *appeal dismissed sub nom. Richardson v. Blumenthal,* 435 U.S. 939 (1978) (footnotes and citations omitted). Citing *Mathews v. Diaz,* 426 U.S. 67 (1976), the Second Circuit refused to disturb the freeze regulations where Congress had investigated this impact, but refused to take action: "It may have been unwise for Congress not to have amended the Act in 1965, but it is not for this court to act when Congress chose not to do so." *Richardson v. Simon,* 560 F.2d at 504.

The legislative history of the IEEPA does not undermine the Executive's actions in ordering the transfer of blocked assets.

C. Congress Has Acquiesced in the President's Exercise of Authority To Nullify Attachments and Compel the Transfer of Iranian Assets.

Congress has reviewed the Algerian Declarations and Executive Orders and not signaled objection to the President's exercise of his IEEPA powers.

One of the significant changes from the TWEA made under the IEEPA was to require periodic reports by the President on national emergencies and to provide for congressional review of presidential actions and regulations. Congress set forth the review function as one of the primary purposes of the IEEPA:

> [G]iven the history of expansive use of emergency powers, the exercise of the emergency economic authorities should also be subject to strict procedural

> limitations, including consultation with Congress, periodic reporting requirements, and provision for termination of states of emergency by Congress and for veto by Congress of regulations promulgated under the international emergency economic powers statute. This should be accomplished at a minimum by conforming the use of the authorities to the procedural requirements of the National Emergencies Act. Where appropriate and necessary, additional procedural safeguards should be written into the new statute.

H.R. Rep. No. 459, 95th Cong., 1st Sess. 11 (1977) ("IEEPA House Report").[25] Accordingly, the IEEPA requires the President to report to Congress immediately upon the exercise of any authority and to issue follow-up reports to Congress at least once every six months. 50 U.S.C. §1703.

Congress also made the President's IEEPA authority subject to the reporting requirements of the National Emergencies Act. IEEPA, 50 U.S.C. §1703(d). Under the National Emergencies Act, the President must promptly transmit to Congress all orders, rules, and regulations promulgated in connection with national emergencies, 50 U.S.C. §§1631, 1641 (Supp. III, 1979), and Congress may thereafter terminate the emergency. 50 U.S.C. §1622(b).[26]

---

[25] The veto of regulations proposed by the House was deleted from the Senate version and does not appear in the statute. *See* S. Rep. No. 466, 95th Cong., 1st Sess. 6, *reprinted in* [1977] U.S. Code Cong. & Ad. News 4540, 4544 ("IEEPA Senate Report").

[26] In addition, the Executive branch is required by the Case Amendment, 1 U.S.C. §112b, *see* note 20 *supra*, to transmit to Congress the text of international executive agreements, such as the Algerian Declarations, "as soon as practicable after such an agreement has entered into force with respect to the United States and in no event later than sixty days thereafter."

The Presidents submitted the required reports,[27] and Congress held hearings on the impact of the Algerian Declarations and the Executive Orders requiring transfer of Iranian assets.[28] However, Congress has taken no further action in response to the President's Executive Orders or subsequent amendment of the Treasury regulations to require transfer of Iran's assets, even though the Algerian Declarations and Executive Orders requiring transfer had been submitted to Congress by the President. No legislation has been recommended or reported by any committee of Congress, and no joint resolution to repeal the national emergency under the National Emergencies Act has been introduced.

Congress had done less in this context than it did in reviewing the Cuban Asset Control Regulations in 1965, which subsequently were left undisturbed in *Richardson v. Simon*, 560 F.2d 500. Thus, Congress has, by its inaction, acquiesced in and approved the President's actions as within the scope of IEEPA.

D. This Court and the Lower Courts in Iranian Assets Litigation Have Upheld the Executive's Statutory Powers To Regulate Transfers of Foreign Assets.

This Court has previously upheld the power of the President to regulate transfers of foreign assets, and two courts of appeal have specifically upheld the authority exercised with respect to Iranian assets.

---

[27] *See* President Carter's report to Congress of January 19, 1981, concerning revocation of licenses, nullification of attachments, and transfer of assets, President's Message to Congress on the United States-Iran Agreement on the Release of the American Hostages, 17 Weekly Comp. of Pres. Doc. 3041-44 (Jan. 19, 1981), and President Reagan's report to Congress of February 24, 1981, concerning ratification of President Carter's actions and suspension of litigation, President's Message to Congress on the Suspension of Litigation Against Iran, 17 Weekly Comp. of Pres. Doc., 189-90 (Feb. 24, 1981).

[28] *Hearings on the Iranian Agreements Before the Senate Comm. on Foreign Relations*, 97th Cong., 1st Sess. (Feb. 17-18, 1981) (unpublished); *Hearings on the Iranian Assets Settlement Before the Senate Comm. on Banking, Housing and Urban Affairs*, 97th Cong., 1st Sess. (Feb. 19, 1981) (unpublished); *Hearings on the Algerian Declarations Before the House Comm. on Foreign Affairs*, 97th Cong. 1st Sess. (Feb. 19, 1981) (unpublished).

In *Orvis v. Brownell,* 345 U.S. 183 (1953), this Court held that attachment liens acquired after the freeze of foreign assets created in a creditor no right to transfer against the United States' disposition of the assets. The facts were very similar to those presented in this case. On June 14, 1941, the Executive had frozen assets of Japan and Japanese nationals pursuant to section 5(b) of the TWEA. The freezing order recognized attachment liens, and petitioners had attached property in which Japanese nationals had an interest. Having obtained judgment, petitioners applied for a license to have the funds paid to them. The application was refused.

This Court held that an attachment lien acquired after the freezing order "did not permit the transfer of a property interest in the blocked funds which could be asserted against the Custodian". 345 U.S. at 187. Distinguishing *Zittman v. McGrath,* 341 U.S. 446 (1951), the Court held that the consent for attachments did not create any right to a transfer:

> [T]o so interpret it would ignore the express conditions on which the consent was extended. Realistically, these reservations deprive the assent of much substance; but that should have been apparent on its face to those who chose to litigate. The opportunity to settle their accounts with the enemy debtor was all that the permission to attach granted.

345 U.S. at 187. Similarly, petitioner Dames & Moore's revocable attachment license gives it no right to payment which would defeat the authority of the President to compel transfer pursuant to the IEEPA. Petitioner's attachments were revocable at any time, 31 C.F.R. §535.805 (Iran App. 48a), and the regulations never permitted the creation of an interest or a transfer to take place by reason of the attachments. 31 C.F.R. §§535.201, 535.203(e), 535.310, 535.418 (Iran App. 9a, 11a, 16a, 23a.)[29]

---

[29] In view of these regulations, the district court in Marschalk Co. v. Iran Nat'l Airlines Corp., No. 79 Civ. 7035 (CBM) (S.D.N.Y. June 11, 1981), (Duffy, J.) ("*Marschalk*"), was constrained to admit that Marschalk's attachment "rights" were "inchoate", at best, and that Marschalk was prohibited from perfecting its attachment interest under New York law. *Marschalk*, typescript op. at 69, 76.

In distinguishing *Zittman,* the First Circuit found that, notwithstanding the authorization for attachments, the attachments would not defeat "the Custodian's (and, by clear implication, the President's) power to transfer, vest, and dispose of the assets in the manner he saw fit." *Chas. T. Main Int'l Inc. v. Khuzestan Water & Power Auth.,* No. 80-1027, typescript op. at 11 (1st Cir. May 22, 1981) ("*Chas. T. Main*"). The D.C. Circuit further distinguished *Zittman* on the ground that the United States had consistently taken the position that post-freeze attachments "must be vacated at its discretion", in contrast to the contradictory representations of the government in *Zittman. American Int'l Group Inc. v. Islamic Republic of Iran,* No. 80-1779, slip op. at 20 (D.C. Cir. June 5, 1981) ("*AIG*").[30]

This Court's prior decisions establish that, absent compelling indications to the contrary, judicial deference to the President's reliance on the IEEPA is particularly appropriate because the President has relied on it in his conduct of foreign relations "[which is] so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *Harisiades v. Shaughnessy,* 342 U.S. 580, 589 (1952). *See also Baker v. Carr,* 369 U.S. 186, 212 (1962) (Many questions touching foreign relations "uniquely demand single-voiced statement of the Government's views.")

> It is quite apparent that if, in the maintenance of our international relations, embarrassment—perhaps serious embarrassment—is to be avoided and success of our aim achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory construction which would not be admissible were domestic affairs alone involved.

United States v. Curtiss-Wright Export Corp., 299 U.S. at 320. Similarly, judicial deference to the actions the President has

---

[30] The D.C. Circuit noted that *Zittman* may have been overruled by *Orvis,* as suggested by the *Orvis* dissent. *AIG,* slip op. at 20 n.9.

taken to restore property as a result of negotiations with a foreign state is appropriate in this case.

Both the District of Columbia and First Circuits have ruled that the President's orders transferring assets are within the express terms of the IEEPA. *AIG*, slip op. at 19-23; *Chas. T. Main*, typescript op. at 9. The First Circuit deemed the language of the IEEPA to be "sweeping and unqualified", *id.*, and concluded that a "post-freeze" attachment did not give Main any "interest in the blocked assets as would later hamper the President in disposing of them." *Id.* at 10. The D.C. Circuit held that in ordering transfer of the assets "the President is acting pursuant to an unequivocal statutory grant of authority." *AIG*, slip op. at 22. The D.C. Circuit recognized that

> [j]udicial refusal to lift the restraints now blocking the transfer of Iranian assets, by contrast, could well have extremely serious consequences that the United States had every interest in avoiding. Differences in the federal policy interest, in the purpose for which attachments are sought, and in the alternatives open to the claimants provide ample grounds for not regarding *Zittman* as limiting the President's power to vacate the attachments against Iranian assets.

Id. (footnote omitted).[31]

[31] In addition, the Ninth Circuit denied an emergency motion for a stay pending appeal of an order vacating an attachment "in light of the broad executive [statutory] powers." Blount Brothers Corp. v. Government of Iran, No. 81-3256 (9th Cir. June 1, 1981), *as amended* (June 9, 1981).

The district courts, with one exception, also have held that the IEEPA empowers the President to revoke the conditional license for "post-freeze" attachments and compel the transfer of the blocked property. Blount Brothers Corp. v. Government of Iran, No. C79-1442V, typescript op. at 4-5 (W.D. Wash. May 11, 1981); Security Pacific Nat'l Bank v. Government of Iran, No. CV-79-4661 RJK, typescript op. 31-32 (C.D. Cal. Apr. 30, 1981), *appeal pending sub nom.* Hoffman Export Corp. v. Government of Iran, No. 81-5432 (9th Cir.); Unidyne Corp. v. Government of Iran, Civ. Act. No. 80-1029-A, typescript op. at 5 (E.D. Va. Mar. 30, 1981). ***But see Marschalk***, typescript op. at 74.

"Post-freeze" attachments and injunctions were vacated without an opinion in American Bell Int'l Inc. v. Islamic Republic of Iran, No. 80-0321

(footnote continues)

The President's actions compelling the transfer of Iran's assets, revoking the license for prejudgment attachments, and nullifying any rights created thereunder were within his maximum authority, under powers expressly conferred upon the Executive:

> When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635 (1952) (Jackson, J., concurring.)[32]

Congress and the courts, in interpreting presidential power under freeze programs, have recognized the necessity for a program which places national above private interests, even in instances where those interests conflict. With respect to the TWEA, this Court stated:

> [C]ontemporaneous conditions and war legislation indicate a purpose to employ all legitimate means effectively to prosecute the war. The law should be

---

(footnote continued)

(D.D.C. June 11, 1981) (oral ruling in partial tr.), *petition for cert. filed* (U.S. June 15, 1981) (No. 80-2111); Sperry Corp. v. Government of Iran, No. 80-2766 (D.D.C. June 11, 1981); Daniel, Mann, Johnson & Mendenhall v. Donald T. Regan, No. CV 81-1101 LEW (C.D. Cal. May 28, 1981) (consolidated with Dames & Moore v. Donald T. Regan, No. CV 81-2064 LEW); S.A. Enterprises Jan de Nul v. Brown & Root Int'l, Ltd., No. H-80-131 (S.D. Tex. May 18, 1981).

In Electronic Data Systems Corp. Iran v. Social Security Organization of the Gov't of Iran, No. CA-3-79-218-F (N.D. Tex. June 7, 1981), typescript op. at 16-17, Judge Porter concluded that the Executive Orders and regulations did not affect an attachment obtained "pre-freeze". The Government of Iran's position is that the Algerian Declarations require nullification of all attachments on Iranian assets.

[32] Examples of the "wide definition of presidential powers under statutory authorization" cited by Justice Jackson in *Youngstown*, 343 U.S. at 636 n.2, include Chicago & Southern Air Lines v. Waterman Steamship Corp., 333 U.S. 103 (1948); Hirabayashi v. United States, 320 U.S. 81 (1943); United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936); Mackenzie v. Hare, 239 U.S. 299 (1915).

> liberally construed to give effect to the purposes it was enacted to subserve . . . It was not necessary for Congress to ascertain the facts of or to deal with each case . . . It was peculiarly within the province of the Commander-in-Chief to know the facts and to determine what disposition should be made of enemy properties in order effectively to carry on the war.

United States v. Chemical Foundation, 272 U.S. 1, 10, 12 (1926).

Consistent with prior decisions of this Court, the lower courts reviewing the Executive's actions in regulating the transfer of Iran's assets overwhelmingly have validated the presidential actions. A like result from this Court would honor the consistent judicial practice.

E. The Foreign Sovereign Immunities Act Does Not Supercede the President's Authority Under the IEEPA To Return Iranian Property.

The Foreign Sovereign Immunities Act of 1976 does not restrict the authority of the President to direct the transfer of the property of a foreign state pursuant to the IEEPA. Prejudgment attachments of the assets of a foreign state or its agencies and instrumentalities are prohibited unless the sovereign has explicitly waived its immunity. 28 U.S.C. §§1609; 1610(d).[33] The FSIA substantially limits the availability of prejudgment

---

[33] The provisional remedy of a prejudgment attachment was not authorized by the FSIA or the Treaty of Amity, Economic Relations, and Consular Rights, Aug. 15, 1955, United States-Iran, 8 U.S.T. 899, T.I.A.S. 3853 (entered into force June 16, 1957) ("Treaty of Amity"). The FSIA and the Treaty of Amity bar such provisional relief because of the absence of express waiver of immunity to prejudgment attachment. In New England Merchants Nat'l Bank v. Iran Power Generation and Transmission Co., 502 F. Supp. 120, 124-27 (S.D.N.Y. 1980), *remanded on other grounds,* No. 80-6254 (2d Cir. Apr. 9, 1981), Judge Duffy correctly held that the *ex parte* orders of prejudgment attachment were not authorized by the FSIA or Treaty of Amity. *Accord,* Security Pacific Nat'l Bank v. Government and State of Iran, No. CV-79-4661 RJK, typescript op. at 34; E-Systems, Inc. v. Islamic Republic of Iran, 491 F. Supp. 1294 (N.D. Tex. 1980); Reading & Bates Corp. v. National Iranian Oil Co., 478 F. Supp. 724 (S.D.N.Y. 1979). The First Circuit noted that "there is a substantial unresolved question whether [plaintiff] was ever

(footnote continues)

attachment of the property of a foreign state under normal conditions. However, the FSIA does not address the authority of the President to deal with property subject to an attachment, and the legislative history of the FSIA evidences no congressional intent that an attachment be immune from the President's emergency powers.

By contrast, the IEEPA specifically addresses the authority of the President over the property of a foreign state in response to a declared national emergency. *See* pp. 18-19 *supra*. Had Congress intended to make section 1702 of the IEEPA subject to the FSIA, Congress could have done so explicitly, but it did not. The entire legislative history of the IEEPA, including over 200 pages of hearings, does not contain one single reference to the FSIA. S. Rep. No. 466, 95th Cong., 1st Sess. 5 (1977), *reprinted in* [1977] U.S. Code Cong. & Ad. News 4540; H.R. Rep. No. 459, 95th Cong., 1st Sess. (1977); *Hearings on Emergency Controls on Int'l Economic Transactions Before the Subcomm. on Int'l Economic Policy and Trade of the House Comm. on Int'l Relations*, 95th Cong., 1st Sess. (1977).

That the FSIA does not pertain to the emergency powers of the President is further confirmed by the absence of any reference in the FSIA or its legislative history to the TWEA, predecessor to the IEEPA, or to the foreign assets control programs in effect in 1976. At the time the FSIA was enacted, regulations prohibited unlicensed attachments involving the property of North Korea, North Vietnam, and Cuba. 31 C.F.R. §500.201, 500.310, 515.201, 515.301 (1980). If Congress had intended to limit the President's authority to control attachments of the property of foreign states, some reference in the FSIA's legislative history to the TWEA or to the foreign assets control programs then in effect would have been expected.

Moreover, the provisions of the FSIA were not viewed as inconsistent with the President's foreign affairs powers. During

---

(footnote continued)

entitled to obtain attachments and injunctions against the assets of the Iranian defendants. . . . [under the FSIA]." *Chas. T. Main*, typescript op. at 13 n.12.

The United States has supported this argument on several occasions. *See* Brief for the United States as *Amicus Curiae*, Electronic Data Systems Corp. Iran v. Social Security Organization of the Gov't of Iran, 610 F.2d 94 (2d Cir. 1979).

the hearings on the FSIA, the Legal Adviser to the State Department testified that the President's power to espouse and settle the claims of United States nationals would continue as an alternative to the remedies provided in the FSIA. *Hearings on H.R. 3493 Before the Subcomm. on Claims and Governmental Relations of the House Comm. on the Judiciary,* 93d Cong., 1st Sess. 26 (1973) (testimony of Charles N. Brower) ("1973 House FSIA Hearings"). Nor would it be correct to imply an inconsistency from the deletion of "future agreements" from sections 1604 and 1609. The House Report states:

> In Sections 1604 and 1609 of the bill, the committee has preserved the reference to existing international agreements but has deleted the language that would make this bill subject to "future" agreements. Mention of future agreements was found to be unnecessary and misleading. The purpose for including the reference was to take into account the possibility that sovereign immunity might become the subject of an international convention. Such a convention, would, under Article VI of the Constitution, take precedence, whether or not the bill was made subject to future international agreements.

H.R. Rep No. 1487, 94th Cong., 2d Sess. 10, *reprinted in* [1976] U.S. Code Cong. & Ad. News 6604, 6608. Congress did acknowledge that by virtue of the Supremacy Clause, U.S. Const., art. VI, future agreements would take precedence and the language was surplusage. *See also* 1973 House FSIA Hearings at 87 (remarks of Rep. Moorhead) ("Of course, we know that because of the constitutional authorities, the rulings of the court on executive agreements, treaties and so forth, that that can take preeminence over a statute.").

The two statutes, the FSIA and the IEEPA, are consistent. The FSIA does not create an underlying right of attachment. Rather, it bans the exercise of such a right in all but a few instances. Its applicability under normal circumstances is conditioned by the IEEPA's emergency powers. In *United States v. Yoshida Int'l, Inc.,* 526 F.2d 560, 568 (C.C.P.A. 1975), the Court of Customs and Patent Appeals held that the President has authority under the TWEA to impose an import

surcharge during a declared economic emergency, even though the surcharge was contrary to the Tariff Act of 1930, the Trade Expansion Act of 1962, and the Trade Act of 1974. The court rejected the contention that the President's powers under an emergency statute, the TWEA, are limited by other statutes dealing with the same subject matter under normal conditions. The court held:

> Congress has said what may be done with respect to foreseeable events in the Tariff Act, the TEA [Trade Expansion Act of 1962], and the Trade Act of 1974 (all of which are in force) and has said what may be done with respect to foreseeable events in the TWEA. In the latter, Congress necessarily intended a grant of power adequate to deal with national emergencies. *It was error below to apply the same approach to determination of intent when Congress is legislating for normal conditions (where the grant is properly narrow) and when Congress is legislating for national emergency conditions (where the grant must be of greater breadth).* We find it unreasonable to suppose that Congress passed the TWEA, delegating broad powers to the President for periodic use during national emergencies, while intending that the President, when faced with such an emergency, must follow limiting procedures prescribed in other acts designed for continuing use during normal times.

526 F.2d at 568 (emphasis added).

Congress has provided in the FSIA for actions with respect to a foreign state's property by a private litigant under normal conditions, whereas in the IEEPA Congress has said what may be done with respect to a foreign state's property by the President during a declared national emergency.

This reconciliation of the two acts is consistent with the established principles of statutory construction that statutes should be construed so as to avoid conflict between them, *e.g.*, *Administrator, Federal Aviation Admin. v. Robertson,* 422 U.S. 255, 265-66 (1975); *Morton v. Mancari,* 417 U.S. 535, 551 (1974); that repeals by implication are disfavored, *id.*; that

statutes dealing with a national emergency are to be construed broadly, *e.g., Propper v. Clark,* 337 U.S. 472, 481 (1949); *United States v. Yoshida Int'l Inc.,* 526 F.2d at 568; and that statutes should not be interpreted in a manner that could result in the breach by the United States of an international agreement, *e.g., Murray v. Schooner Charming Betsy,* 6 U.S. (2 Cranch) 64, 118 (1804); *Filartiga v. Pena-Irala,* 630 F.2d 876, 887 n.20 (2d Cir. 1980). By contrast, a strained interpretation of the FSIA which attempts to inject into that Act a limitation upon the emergency powers delegated to the President in the IEEPA—absent any reference to emergency powers in the FSIA or its legislative history—offends all of these principles of statutory construction.

The IEEPA was intended to confer in the President the power to compel transfer of assets to the Federal Reserve Bank and ultimately to an international tribunal for claims settlement and to the foreign state owning the assets. The plain language and legislative history of the IEEPA, congressional acquiescence in the specific actions here taken by two Presidents, and the previous decisions of this Court and lower courts in these cases confirm that the Executive actions are within the statutory authority expressly conferred by the IEEPA and are not diminished or otherwise affected by the FSIA and should be sustained by this Court.

III. PETITIONER'S CLAIM HAS BEEN VALIDLY SETTLED BY THE ALGERIAN DECLARATIONS, AND THE FOREIGN SOVEREIGN IMMUNITIES ACT DOES NOT IMPAIR THE VALIDITY OF THIS SETTLEMENT.

A. The Executive Has Authority To Settle Petitioner's Claims by the Algerian Declarations.

The Algerian Declarations embody a binding international agreement between the Governments of the United States and Iran that, *inter alia,* permanently settles the claims of United States nationals against Iran. General Principle B of the General Declaration, which was in full force and effect and binding on the United States as of January 19, 1981, before

petitioner obtained its summary judgment, requires termination of litigation in United States courts involving claims of United States nationals against the Government of Iran. General Principle B also requires the nullification of judgments entered in such actions. (Pet. App. 21-22).

In order to implement its interpretation of General Principle B, the Executive on February 24, 1981, suspended all claims in United States courts against the Government of Iran and Iranian entities. Exec. Order No. 12,294, 46 Fed. Reg. 14,111 (1981) (Pet. App. 52); 46 Fed. Reg. 14,335 (1981) (to be codified in 31 C.F.R. §535.222) (Pet. App. 78). Because the Algerian Declarations settle the claims underlying this action and must be given effect, the summary judgment entered below should be vacated; all further proceedings before the district court, discontinued; and all further attempts to execute on the judgment, prohibited.

In this case summary judgment is particularly improper because it was entered on February 18, 1981, after the Algerian Declarations were adhered to and in effect and notwithstanding Treasury Regulations specifically prohibiting the entry of judgments in actions against Iran or its agencies or instrumentalities. 31 C.F.R. §§535.504(b)(1), 535.203(c) (1980) (Iran App. 29a, 10a).[34]

The intent of the Declarations was manifestly to relieve the Government of Iran of any further obligation to defend against suits of United States nationals in United States courts. Correspondingly, the United States has settled all its nationals' claims against the Government of Iran in the framework of binding arbitration of the vast number of claims, Claims Declaration, Art. II, VII, (Pet. App. 30-31, 33-34) and other consideration, such as the replenishable awards fund. General Declaration, ¶7 (Pet. App. 25). The Tribunal's awards are final, binding, and enforceable worldwide, Claims Declaration, Art. IV, ¶¶1,3

[34] Although the court in *AIG* refused to vacate a partial summary judgment, merely remanding the matter to the lower court and staying all proceedings, slip. op. at 32-34, the court did not address the argument that entry of the summary judgment was prohibited. *Id.* at 34.

(Pet. App. 32); and the Tribunal has plenary authority not only to determine its jurisdiction upon request by either Government, Art. VI, ¶4 (Pet. App. 33), but also to enter awards to assure enforcement of the parties' respective obligations under the Algerian Declarations. Art. IV, ¶3 (Pet. App. 32); *see* General Declaration, ¶17 (Pet. App. 28-29).

This Court specifically has validated the President's power to settle claims of American citizens against foreign states, particularly when the resolution of these disputes was integrally connected with normalizing the United States' relations with a foreign state. *United States* v. *Pink*, 315 U.S. at 229-30.

> Power to remove such obstacles to full recognition of settlement of claims of our nationals . . . certainly is a modest implied power of the President . . . . No such obstacle can be placed in the way of rehabilitation of relations between this country and another nation, unless the historic conception of the powers and responsibilities of the President in the conduct of foreign affairs . . . is to be drastically revised.

Id.; *see id.* at 240 (Frankfurter, J., concurring).

Numerous authorities support the power of the President to settle private grievances against foreign countries as part of an overall plan to normalize relations with that country. *See Nielsen v. Secretary of Treasury*, 424 F.2d 833, 840-41 (D.C. Cir. 1970) (one purpose of the Executive's freezing the assets of an unfriendly foreign state is to use the assets as a bargaining chip in negotiations to reestablish friendly relations); *Ozanic v. United States*, 188 F.2d 228, 231 (2d Cir. 1951) (L. Hand, J.) ("[C]ontinued mutual amity between [this] nation and other powers again and again depends upon a satisfactory compromise of mutual claims."); *Dole v. Carter*, 444 F. Supp. 1065, 1069 (D. Kan. 1977) (only the President can determine what foreign states this country will recognize; the power to remove all obstacles to full recognition includes the power to arrange for compromise of grievances against the foreign state); *Avramova v. United States*, 354 F. Supp. 420, 422 (S.D.N.Y. 1973) (executive agreement settling claims of United States citizens

against foreign countries is within the implied powers given to the Executive by the Constitution); S. Crandall, *Treaties: Their Making and Enforcement* 108 (2d ed. 1916) ("The President, being entrusted with the right of conducting all negotiations with foreign governments, is the sole judge of the expediency of instituting, conducting or terminating them in respect of reclamations for injuries sustained by citizens abroad.").

Accordingly, when the Executive enters into an agreement—such as the Algerian Declarations—which settles its nationals' claims incident to normalizing relations with another sovereign, it is acting within its authority. Because the Algerian Declarations constitute an executive agreement within the President's traditional foreign affairs powers, they are the law which governs this litigation.[35] Similarly, the act of adherence to the Declarations operated to prohibit the entry of any judgment in this case subsequent to that date. But even if the judgment had been entered prior to the date on which the Algerian Declarations became effective, the judgment must be set aside because the Declarations change the applicable law with respect to claims and derivatively with respect to suits brought on those claims. Because the underlying claim has been settled, the prior entry of a judgment on that claim can be of no effect.

This result is further compelled by the seminal case of the *United States v. The Schooner Peggy*, 5 U.S. (1 Cranch) 102 (1801). In that case the United States seized a French vessel. The Circuit court found such seizure to be proper under the law of the United States, entitling the United States to condemn the ship and take its cargo as a prize. While the case was pending on appeal, the United States (through the Executive Branch) and France signed a convention that directed all captured property, not definitively condemned, to be mutually restored. In an opinion written by Chief Justice Marshall, the Supreme Court ordered the judgment vacated:

> [T]he court must decide according to existing laws, and if it be necessary to set aside a judgment, rightful

---

[35] *See* note 20 *supra*.

> when rendered but which cannot be affirmed, but in violation of law, the judgment must be set aside.

5 U.S. (1 Cranch) at 110.

The Court should enforce the settlement agreement controlling this suit and direct the lower court to discontinue further proceedings in this action. Just as in *The Schooner Peggy*, the judgment entered by the district court must be set aside, for the President, by settling the claim underlying the judgment on behalf of the plaintiff, has thereby changed the law governing this litigation. Plaintiff's claim is no longer cognizable in United States courts.

B. The Foreign Sovereign Immunities Act Does Not Interfere with the Executive's Authority To Settle Claims.

The courts of appeals that have addressed the question of the President's authority to settle claims of United States nationals in the context of the Algerian Declarations have concluded that the President possesses such authority. *AIG*, slip op. at 18, 30; *Chas. T. Main*, typescript op. at 22. Appellees in both cases challenged the authority of the President on the ground that the FSIA, by giving jurisdiction to United States courts to hear claims of United States nationals against foreign states, withdrew the authority of the President to settle such claims. The First and District of Columbia Circuits rejected this argument, as should this Court.

Both the *AIG* and the *Chas. T. Main* courts reasoned that the authority to settle claims did not interfere with the jurisdiction of United States courts pursuant to the FSIA, because the President had acted primarily with respect to the claims and not with respect to the lawsuits *per se*. Both courts concluded that the actions must be dismissed for failure to state a claim, once the claim had been settled by the President. *AIG*, slip op. at 23; *Chas. T. Main*, typescript op. at 16. The authority of the President to settle an international claim can no more interfere with the jurisdiction of a court than can the authority of any plaintiff to settle his claim.

The claims of a national against a foreign state are the claims of his sovereign under international law. L. Henkin, *Foreign Affairs and the Constitution* 262 (1972); Q. Wright, *The Control of American Foreign Relations* 244 (1922). The sovereign owns its national's claim under international law to the same extent that the national himself does. Thus, the sovereign may settle the claim, if it chooses, without consultation with or authorization from the national. The powers of the sovereign in international affairs are not solely derived from the Constitution but also, although limited by the Constitution, derive from the nature of a sovereign nation in a world community. *United States v. Curtiss-Wright Export Corp.*, 299 U.S. at 315-18. Where the sovereign has the power to settle the claims of its nationals, and where Congress has not acted to interpose itself in the settlement process or to limit the President's authority to do so, *AIG*, slip op. at 30, the Executive's authority must be upheld.

Both the *AIG* and *Chas. T. Main* courts determined that the President's claims settlement authority lies within the second category of Presidential powers delineated by Justice Jackson in *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. at 337:

> When the President acts in the absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law.

The *Chas. T. Main* court reasoned that the imperatives of events and contemporary imponderables necessitated the "authority to remove impediments to the peaceful resolution of international disputes" in order to meet the responsibilities of

presidential office. Typescript op. at 20. The legislative history of the FSIA is bare of any indication that Congress intended to thereby deny the President's authority to settle claims of United States nationals.[36] Congressional awareness of executive claims settlement agreements must be assumed. As the court noted in *AIG*: "[T]he President has entered into binding settlements with foreign nations compromising the claims of U.S. nationals at least 10 times since 1952 without seeking the advice and consent of the Senate." Slip op. at 28 (citations omitted). On this basis the court ruled that the President's suspension of claims "was an example of a continual executive practice in which the Congress has, at the very least, acquiesed." *AIG*, slip op. at 18.[37]

> [T]he fact that the State Department may no longer, in the normal course of events, dispose of commercial litigation against a foreign state by asserting that state's immunity from suit does not reflect adversely on the President's long accepted power, in times of international emergency, to settle or provide substitute means for the resolution of the underlying claims.

Chas. T. Main, typescript op. at 21.

Only two district court judges have disagreed with the unanimous opinions of these courts of appeals and the numerous district courts that have upheld the President's authority to

---

[36] This silence is even more noteworthy in that Congress, when considering the impact of the IEEPA on the President's powers a year later, specifically stated, "Nothing in this act is intended by the committee. . . to impede the settlement of claims of U.S. citizens against foreign countries." S. Rep. No. 466, 95th Cong., 1st Sess. 6, *reprinted in* [1977] U.S. Code Cong. & Ad. News 4540, 4544. If Congress had intended or anticipated that the FSIA would prevent the President from settling claims, Congress undoubtedly would have given some such indication. In contrast, in the context of the IEEPA, a statute much more likely to affect claims settlements, which are often born in crisis, Congress took care to avoid even the appearance of impairing the President's authority.

[37] This acquiescence is further demonstrated in that, subsequent to issuance of the Algerian Declarations, both the Senate Foreign Relations Committee and the House Committee on Foreign Affairs held hearings concerning the Algerian Declarations (on February 17 and 19, 1981, respectively). *See* note 28 *supra*.

enter into and implement the Algerian Declarations.[38] *Marschalk Co., v. Iran Nat'l Airlines Corp.*, No. 79 Civ. 7035 (CBM) (S.D.N.Y. June 11, 1981) (Duffy, J.); *Electronic Data Systems Corp. Iran v. Social Security Organization of the Government of Iran*, No. CA3-79-218-F (N.D. Tex. June 7, 1981) (Porter, J.) ("*EDSCI*"). Both courts found that Congress, in enacting the FSIA, had withdrawn the authority of the President to settle these claims. *Marschalk*, typescript op. at 25; *EDSCI*, typescript op. at 22. These rulings, however, fail to distinguish between the President's former authority to assert sovereign immunity on behalf of foreign sovereigns and the power to settle a United States national's claim against a foreign state.

Under pre-FSIA practice, when the Executive suggested that a court decline to hear a claim based on the foreign state's sovereign immunity, the claim was not extinguished, although the suit was subject to dismissal. The plaintiff could thereafter still seek to have the State Department espouse his claim or could bring an action in the courts of the foreign sovereign or in other foreign jurisdictions where assets of the foreign states were located. However, when a national's claim is settled by his sovereign, he no longer has a claim which can be presented in another forum. The conclusion is inescapable, therefore, that the authority to control the deference a United States court should show a foreign sovereign is separate and distinct from the authority to settle claims against a foreign state. The failure to perceive this distinction prompted both district courts in *Marschalk* and *EDSCI* to find that the FSIA withdrew this latter power of the President's, admittedly "[d]espite the lack of any legislative history bearing directly on the issue." *EDSCI*, typescript op. at 22. Congress apparently apprehended a distinction lost on these two courts.

---

[38] *See* Partial tr. of hearing, American Bell Int'l Inc. v. Islamic Republic of Iran, Civ. Act. No. 80-0321 (D.D.C. June 11, 1981), *appeal docketed*, No. 81-1656 (D.C. Cir. June 11, 1981), *petition for cert. filed* (U.S., June 15, 1981) (No. 80-2111); Blount Bros. Corp. v. Government of Iran, Civ. No. 79-1142-V (W.D. Wash. May 1, 1981), *appeal pending*, No. 81-3256 (9th Cir.); Security Pacific Nat'l Bank v. Government and State of Iran, CV 79-4661 RJK (C.D. Cal. Apr. 30, 1981), *appeal pending sub nom.* Hoffman Export Corp. v. Government of Iran, No. 81-5432 (9th Cir.); Chas. T. Main Int'l Inc. v. United States, Civ. No. 80-315-C (D. Mass. Mar. 17, 1981), *aff'd*, No. 81-1176 (1st Cir. May 22, 1981).

Absent any evidence that the FSIA was intended to preempt the President's congressionally recognized authority to negotiate and enter into claims settlement agreements, a construction of that statute to hold the President's actions unconstitutional should be avoided. As the court in *Chas. T. Main* concluded, the FSIA was not meant to "eradicate 'executive branch flexibility in an international crisis.' " Typescript op. at 20. In the complete absence of contrary congressional disapproval, this Court must uphold the President's authority to settle these claims and, therefore, should direct the district court to discontinue further proceedings upon setting aside the summary judgment.

IV. NO TAKING COGNIZABLE BY THIS COURT HAS OCCURRED.

A. Nullification of Petitioner's Prejudgment Attachments Was Not a Taking Under the Fifth Amendment.

Because petitioner could never have acquired a property interest in the attached assets, the nullification of prejudgment attachments obtained under a revocable license did not constitute a taking under the Fifth Amendment, and petitioner, therefore, is not entitled to compensation. Petitioner did not have an outstanding attachment on the date former President Carter blocked Iran's assets.[39] The Treasury Department regulations promulgated to implement the Executive Order blocking Iran's assets specifically prohibited attachments, liens, executions, garnishments, or other judicial process with respect to Iranian property, unless authorized. 31 C.F.R. §535.203(e) (1980) (Iran App. 11a); 44 Fed. Reg. 65,957 (1979) (to be codified in 31 C.F.R. §535.201(a)) (Iran App. 50a); 31 C.F.R. §535.310 (Iran App. 16a). No such authorization existed.

---

[39] The Government of Iran contends that General Principle B of the General Declaration commands nullification of all provisional restraints against movement of Iranian assets irrespective of when the injunctions or attachments were obtained. Assuming *arguendo* that the prejudgment attachments had been obtained prior to November 14, 1979, no compensable taking would exist because sovereign immunity would have prevented issuance of the writ. 28 U.S.C. §§1609, 1610(a); *see* note 33 *supra*.

On November 19, 1979, the regulations were amended to provide, *inter alia,* that the regulations themselves and any licenses or authorizations issued thereunder could be amended, modified, or revoked at any time. 31 C.F.R. §535.805 (Iran App. 48a). Thereafter, the regulations were amended to allow certain judicial proceedings to go forward with respect to Iranian property. 31 C.F.R. §535.504(a) (Iran App. 29a). This regulation was interpreted as authorizing prejudgment attachments. 31 C.F.R. §535.418 (Iran App. 23a). However, §535.418 specifically precluded from the authorization for prejudgment attachments the payment or delivery of any attached property to a court, sheriff, marshal, or similar entity. The intent of the Executive, as manifested in the regulations, was only to allow each claimant to establish its priority with respect to Iranian assets in the event the assets were unblocked and made available for use in litigation in the United States courts.

This event never transpired, and by the January 19, 1981 Executive Orders and the implementing regulations, outstanding attachments were nullified and future attachments were prohibited. Exec. Order No. 12,277, §1-102(b), (c), 46 Fed. Reg. 7,915 (1981) (Pet. App. 37); No. 12,278, §1-104(b), (c), 46 Fed. Reg. 7,917 (1981) (Pet. App. 41); No. 12,279, §1-102(b), (c), 46 Fed. Reg. 7,919 (1981) (Pet. App. 44); No. 12,280, §1-102(b), (c), 46 Fed. Reg. 7,921 (1981) (Pet. App. 47); No. 12,281, §1-102(b), (c) 46 Fed. Reg. 7,923 (1981) (Pet. App. 50); 46 Fed. Reg. 14,334 (1981) (to be codified in 31 C.F.R. §535.218(b), (c)) (Pet. App. 75); 46 Fed. Reg. 14,336 (1981) (to be codified in 31 C.F.R. §535.504(b)(1)) (Pet. App. 82).

The two courts of appeals to have addressed the so-called "taking" issue denied that the nullification of the prejudgment attachments constituted a taking by the United States. ***AIG,*** slip op. at 37-38; ***Chas. T. Main,*** typescript op. at 12-13. Whatever "rights" claimants might have had as to the attached property were subordinated and subject to the Executive's IEEPA powers. In the exercise of these powers, the Executive granted a limited license to obtain prejudgment attachments, but reserved

the right to revoke any license therefor in order to enable the United States to discharge certain of its obligations under the Algerian Declarations. Holding that the *vacatur* of attachments and injunctions in these circumstances occasioned no Fifth Amendment "taking", the District of Columbia Circuit explained:

> [V]acation of the attachments is not a taking for which just compensation must be paid. Revocation of a license to attach, explicitly made revocable, cannot be considered a taking, because those claimants proceeding under such license had no entitlement to the attachments that would constitute property capable of being taken . . . .
>
> . . . The holders of the interests had no reasonable expectation that, against the factual backdrop of an unresolved international crisis, the President would not revoke what he had granted . . . . Without a reasonable expectation that their restraints were protected, the appellees cannot claim any property interest in those restraints. If so, the President took nothing on January 19.

AIG, slip op. at 38 (footnotes omitted). Similarly, the First Circuit ruled that

> the compensation clause of the fifth amendment of the Constitution does not constrain the President in nullifying Main's attachments. Main's argument based on the compensation clause is undercut by the fact that its "interest" in Iranian assets was *ab initio* subordinate to the President's IEEPA powers . . . . Since Main's "property interest" in the Iranian assets was defined and delimited by IEEPA's terms, it could not have been "taken" by presidential action effected pursuant to the statute.

Chas. T. Main, typescript op. at 12-13.

The lone opinion finding nullification of "post-freeze" attachments to be a "taking" is Judge Duffy's opinion in *Marschalk*, typescript op. at 75-82. That court's conclusion was

based on the assumption that a lien was created upon the attached property by the steps plaintiff took to levy on the property. *Id.* at 76. This result ignores completely the proscriptions imposed by the Treasury Department regulations. All transfers of property in which Iran had an interest were prohibited, unless authorized. 44 Fed. Reg. 65,957 (1979) (to be codified in 31 C.F.R. §535.201(a)) (Iran App. 50a). Included within the definition of "transfer" were "the creation or transfer of any lien" and the "levy of or under any judgment, decree, attachment, execution, or other judicial or administrative process or order." 31 C.F.R. §535.310 (1980) (Iran App. 16a). Further, the regulations prohibited unauthorized attachments, liens, executions, garnishments or other judicial process. 31 C.F.R. §§535.201, 535.203(e), 535.310 (Iran App. 9a, 11a, 16a).

The regulations distinguished between attachments, on the one hand, and liens, levies, and executions, on the other. *Id.* The authorization for prejudgment attachments in 31 C.F.R. §§535.504(a), 535.418 (Iran App. 29a, 23a), did not authorize the creation of a lien against, or the levy on property subject to, prejudgment attachment, and no such authorization can be inferred from these or other regulations. Just as prejudgment attachments could not issue unless specifically authorized, liens or levies could not be created or effected without specific authorization. Since such regulations were never promulgated, Judge Duffy erred in finding that a lien was created upon attached property. Consequently, property interests could not be created by the prejudgment attachments, and no "taking" under the Fifth Amendment occurred.

B. The Issue Whether Any Obligation Can Be Imposed on the United States To Compensate Petitioner for the Settlement of Claims Under the Algerian Declarations Is Not Ripe for Review.

The Government of Iran takes no position with respect to petitioner's contention that the settlement of claims by the Algerian Declarations is a "taking" for which petitioner is entitled to compensation. Regardless of the merits of petition-

er's arguments, however, the issue of compensation is not ripe for review and should not be addressed by the Court at this time.

It is far from clear whether petitioner, or any other American claimant, will suffer any loss at all, since petitioner may well have a complete remedy with the Arbitral Tribunal established by the Algerian Declarations. In any event, federal courts will not intervene lightly where the prospect of a loss is so tenuous. *Cf. Union Carbide Agricultural Prods. Co. v. Costle,* 632 F.2d 1014 (2d Cir. 1980) (a very strong showing of uncompensated taking must be made to persuade the Court to thwart a governmental regulation); *Nielsen v. Secretary of Treasury,* 424 F.2d 833 (D.C. Cir. 1970) (courts will not obstruct Executive's regulation of foreign assets even though claimants may suffer temporary or partial losses).

The Arbitral Tribunal is to be funded initially with $1 billion, and thereafter a minimum balance of $500 million will be maintained. General Declaration ¶7 (Pet. App. 25). If the Arbitral Tribunal finds that petitioner is entitled to an award, petitioner will be entitled to the full amount of that award, not a reduced percentage. Further, awards of the Arbitral Tribunal specifically are made enforceable in the courts of any nation. Claims Declaration, Art. IV, ¶3 (Pet. App. 32). To the extent petitioner is dissatisfied with the remedy of the Arbitral Tribunal or might somehow be deprived of that remedy, petitioner must await the decision of the Tribunal on its claim before it legitimately can claim any loss. The mere prospect of injury triggers no Fifth Amendment protections.[40]

The District of Columbia Circuit and the First Circuit held that the issue of compensation for the settlement of claims under the Algerian Declarations is not ripe for review. *AIG,*

---

[40] Petitioner, in fact, has suffered no compensable loss, because the summary judgment was entered in patent violation of the Treaty of Amity and the FSIA. *See* Mashayekhi v. Iran, Civ. Act. No. 79-2039 (D.D.C. June 10, 1981). Thus, the question of Fifth Amendment compensation, at best, only could be addressed on this appeal in connection with a subsequent decision of the lower court on the Government of Iran's and AEOI's original defenses of sovereign immunity and other arguments against the district court's entry of the unlawful order. It is not ripe for decision at this time.

slip op. at 34-38; *Chas. T. Main,* typescript op. at 23-24. In addition, the United States District Court for the Central District of California reached the same conclusion: "Any contention of loss is thus premature." *Security Pacific Nat'l Bank v. Government and State of Iran,* No. CV 79-4661 RJK (C.D. Cal. Apr. 30, 1981), typescript op. at 39, *appeal pending sub nom. Hoffman Export Corp. v. Government of Iran,* No. 81-5432 (9th Cir.).

The District of Columbia Circuit reasoned:

> We have no reason to believe that the arbitration panel will not render meaningful relief. We have no reason to believe that the $1 billion security fund will not cover all meritorious claims. We have no reason to believe that the Iranians will not replenish the fund as they have agreed to do. We have no reason to believe that if they do not replenish the fund, then the prevailing claimants will be unable to obtain worldwide enforcement of any award according to the terms of the declarations. Finally, and by no means of least importance, we have no assurance that the appellees' claims are meritorious, and thus that executive action has taken anything of value.

AIG, slip op. at 36;[41] *accord, Security Pacific Nat'l Bank,* typescript op. at 39. The First Circuit went further and stated:

> Not only is *Main's* claim for compensation, at this point, wholly speculative, it is . . . made before the

---

[41] This reasoning is consistent with the Court's recent decision in Hodel v. Virginia Surface Mining & Recl. Ass'n, No. 79-1538 (U.S. June 15, 1981). Prior to its enforcement, appellees challenged the constitutionality of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§1201-1328 (Supp III. 1979) ("Surface Mining Act"), alleging, *inter alia,* that provisions of the Surface Mining Act effected an uncompensated taking of private property in violation of the Fifth Amendment. The court rejected appellees' contention:

> Because appellees' taking claim arose in the context of a facial challenge, it presented no concrete controversy concerning either application of the Act to particular surface mining operations or its effect on specific parcels of land. Thus, the only issue

(footnote continues)

> wrong tribunal . . . . If and when *Main* can establish a "taking" for which compensation is due, its remedy will lie in the Court of Claims . . . .

Chas. T. Main, typescript op. at 24.[42]

In contrast, Judge Duffy apparently concluded that the "taking" issue was ripe for review and in *dicta* stated that the settlement of claims would be a compensable taking. *Marschalk,* typescript op. at 57-64. This result was premised on Judge Duffy's conclusion that the loss plaintiff suffered was its right to adjudicate its claims in United States courts and that, even if it prevailed before the Arbitral Tribunal, plaintiff would be able to recover no more than 20 cents on the dollar. Typescript op. at 62-63. First, the finding that claimants

---

(footnote continued)

> properly before the District Court and, in turn, this Court, is whether the "mere enactment" of the Surface Mining Act constitutes a taking . . . .
>
> . . . .
>
> . . . [A]ppellees cannot at this juncture legitimately raise complaints in this Court about the manner in which the challenged provisions of the Act have been or will be applied in specific circumstances, or about their effect on particular coal mining operations. There is no indication in the record that appellees have availed themselves of the opportunities provided by the Act to obtain administrative relief by requesting either a variance from the approximate original contour requirement of §515(d) or a waiver from the surface mining restrictions in §522(e). If appellees were to seek administrative relief under these procedures, a mutually acceptable solution might well be reached with regard to individual properties, thereby obviating any need to address the constitutional questions. The potential for such administrative solutions confirms the conclusion that the taking issue decided by the district court simply is not ripe for judicial resolution.

Hodel, slip op. at 29-31 (footnotes omitted). Since petitioner has not sought relief before the Arbitral Tribunal, the taking issue is not ripe for judicial resolution. *Accord,* Hodel v. Indiana, No. 80-231, slip. op. at 18-19 (U.S. June 15, 1981).

[42] The District of Columbia Circuit declined to rule on whether claimants would have a remedy in the Court of Claims, *AIG,* slip op. at 37; in *Marschalk* the court opined that a remedy would not lie in the Court of Claims. Typescript op. at 63.

prevailing before the Arbitral Tribunal will recover no more than 20 cents on the dollar is groundless. The Algerian Declarations explicitly provide that successful claimants will recover the full dollar amount of their awards. Further, the assumption that Iran will not replenish the fund to maintain the minimum balance of $500 million is also without foundation, especially given Iran's substantial efforts to date to establish the Arbitral Tribunal.

Second, to the extent claimants are entitled to have their claims adjudicated, no "right" exists to have these claims adjudicated in United States courts. Judge Duffy simply makes the assertion without authority. The reason for the omission is simple. This Court and other courts have recognized repeatedly that there is no "right" to resolve in the courts all disputes. *See, e.g., Morrissey v. Brewer,* 408 U.S. 471 (1972) (revocation of parole by administrative agency); *Goldberg v. Kelley,* 397 U.S. 254 (1970) (termination of welfare payments by administrative agency); *County-Wide Insurance Co. v. Harnett,* 426 F. Supp. 1030 (S.D.N.Y.), *aff'd mem.,* 431 U.S. 934 (1977) (upholding New York's "No-Fault" Insurance Law containing compulsory arbitration provision as reasonable alternative to judicial proceeding).

Under these circumstances Judge Duffy's supposition that the settlement of claims would be a taking must be rejected.

The case relied on primarily by other claimants in support of their arguments that the taking issue is ripe for determination is the *Regional Rail Reorganization Act Cases,* 419 U.S. 102 (1974). The *Regional Rail Reorganization Act Cases* presented unique questions concerning the validity of Congress's comprehensive plan to reorganize the railroad network in the Northeast. Plaintiffs (parties with interests in the reorganized Penn Central Railroad) attacked the constitutionality of the Regional Rail Reorganization Act on the ground that it was a taking of their property without just compensation. They argued, in particular, that the securities and other obligations they received were not equivalent to the rail properties whose transfer was compelled by the Act and that the law required continuation of rail operations that effectively eroded the Penn Central estate. The only issue that the Supreme Court found

"ripe for adjudication" was the "availability of the Tucker Act," not the probable success of plaintiffs' claims thereunder. 419 U.S. at 124-25, 136-37.

What the Supreme Court did not hold in the *Regional Rail Reorganization Act Cases* was that the plaintiffs actually had suffered a compensable loss and would therefore benefit from the "availability" of a Tucker Act remedy. "[W]hat constitutes a 'taking' for purposes of the Fifth Amendment has proved to be a problem of considerable difficulty," *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 138 (1978), and federal district and circuit courts ordinarily will not determine that "property" has been "taken" where the Court of Claims or another forum is available. *See Lenoir v. Porters Creek Watershed Dist.*, 586 F.2d 1081, 1087-88 (6th Cir. 1978); *Stringer v. United States*, 471 F.2d 381 (5th Cir. 1973); *cert. denied*, 412 U.S. 943 (1973); *Chevron Chem. Co. v. Costle*, 499 F. Supp. 732, 737, 742-43 (D. Del. 1980), *aff'd*, 641 F.2d 104 (3d Cir. 1981). The availability of the Tucker Act as a possible remedy (with the Court of Claims as the forum) and any entitlement to compensation are separate questions. *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59 (1978) (constitutionality of the Price-Anderson Act upheld against a Fifth Amendment challenge, in part, on ground that remedy available in Court of Claims).

The District of Columbia Circuit in *AIG* rejected plaintiffs' reliance on the *Regional Rail Reorganization Act Cases*. The court determined the allegations that a taking had occurred in the suits before it here substantially more speculative than the allegations of a "conveyance taking" and an "erosion taking" in the *Regional Rail Reorganization Act Cases*. *AIG*, slip op. at 36.

The Government of Iran submits that the result reached in *AIG* is correct. Petitioner cannot demonstrate that it has suffered a taking. Accordingly, the issue of whether petitioner ultimately may be entitled to compensation is not ripe for review.

CONCLUSION

Based on the foregoing, this Court should uphold the actions the President has taken to implement the Algerian Declarations, affirm the district court's denial of the preliminary injunction[43], the dismissal of petitioner's complaint, and the consolidated *vacatur* of prejudgment attachments. This Court should also direct the lower court to give immediate effect to the *vacatur* of attachments, vacate the summary judgment, and prohibit all further judicial proceedings based on that judgment or on petitioner's claim.

Respectfully submitted,

THOMAS G. SHACK, JR.
Counsel of Record
RAYMOND J. KIMBALL
GREGORY DE SOUSA
CHRISTINE COOK NETTESHEIM

ABOUREZK, SHACK &
MENDENHALL, P.C.
1129 Twentieth Street, N.W.
Washington, D.C. 20036
(202) 293-5900

Counsel for Intervenor-Respondent Islamic Republic of Iran

On the Brief:
JOHN B. BEATY
JAMES A. STENGER
THOMAS D. SILVERSTEIN

June 19, 1981

[43] The injunction pending appeal directed against respondents should expire by its terms once a ruling of this Court is issued.

No. 80-2078

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

DAMES & MOORE, a partnership,
Petitioner,

v.

DONALD T. REGAN, the Secretary
of the Treasury of the United States
of America, and THE UNITED STATES OF AMERICA,
Respondents,

and

THE ISLAMIC REPUBLIC OF IRAN,
THE ATOMIC ENERGY ORGANIZATION OF
THE ISLAMIC REPUBLIC OF IRAN,
and
BANK MARKAZI IRAN,
Intervenor-Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit Before Judgment

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Brief of Intervenor-Respondent the Islamic Republic of Iran and Appendix have

been served by 3:00 o'clock p.m. this 19th day of June, 1981, in the manner indicated:

by air courier:

C. STEPHEN HOWARD, ESQ.
TUTTLE & TAYLOR INC.
609 South Grand Avenue
Los Angeles, California 90017
(Counsel for Petitioner Dames & Moore)

STANLEY C. FICKLE
University of Indiana Law School
Bloomington, Indiana 47401
(Of Counsel for Petitioner Dames & Moore)

LEONARD B. BOUDIN, ESQ.
RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.
30 East 42nd Street
New York, New York 10017
(Counsel for Intervenor-Respondent Bank Markazi)

ELIHU INSELBUCH, ESQ.
GILBERT, SEGALL & YOUNG
430 Park Avenue
New York, New York 10022
(Counsel for Intervenor-Respondent the Atomic Energy Organization of the Islamic Republic of Iran)

JOHN D. HOFFMAN, JR., ESQ.
SHEARMAN & STERLING
53 Wall Street
New York, New York 10005
(Counsel for Applicants Amici Curiae Citibank International, et al.)

DANIEL P. LEVITT, ESQ.
KRAMER, LEVIN, NESSEN,
KAMIN & SOLL
919 Third Avenue
New York, New York 10022
(Counsel for Applicants Intervenors-Respondents 26 Iranian Banks)

THOMAS W. LUCE, III, ESQ.
HUGHES & HILL
1000 Mercantile Dallas Building
Dallas, Texas 75201
(Counsel for Applicants Amicus Curiae Electronic Data Systems Corporation Iran)

EDWARD N. COSTIKYAN, ESQ.
PAUL, WEISS, RIFKIND, WHARTON & GARRISON
345 Park Avenue
New York, New York 10154
(Counsel for Applicant Amicus Curiae The Marschalk Company, Inc.)

MICHAEL BURROWS, ESQ.
BAKER & MCKENZIE
375 Park Avenue
New York, New York 10152
(Counsel for Applicants Amicus Curiae Reading & Bates Corporation, et al.)

by hand delivery to:

WADE H. MCCREE, JR.
Solicitor General, Room 5614
Department of Justice
Washington, D.C. 20530

MILES N. RUTHBERG, ESQ.
TUTTLE & TAYLOR
1901 L Street, N.W.
Washington, D.C. 20036
(Local counsel to Petitioner Dames & Moore)

ALAN RAYWID, ESQ.
COLE, RAYWID & BRAVERMAN
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(Counsel for Amici Curiae Sperry Corporation, et al.)

ROBERT A. SEEFRIED, ESQ.
SEYMOUR, SEEFRIED & HOFFMAN
1901 L Street, N.W.
Washington, D.C. 20036
(Local counsel to Applicants Intervenor-Respondents 26 Iranian Banks)

MONROE LEIGH, ESQ.
STEPTOE & JOHNSON
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
(Of Counsel to Applicant Amicus Curiae Electronic Data Systems Corporation Iran)

/S/ THOMAS G. SHACK, JR.

Thomas G. Shack, Jr.
Counsel of Record